

25-5-2
No. 12053

United States
Court of Appeals
for the Ninth Circuit

JULIUS WILD,

Appellant,

VS.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

(In Two Volumes)

VOLUME I.

(Pages 1 to 264, Inclusive)

Appeal from the United States District Court
for the Northern District of California,
Southern Division.

FILED
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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San Francisco, California,

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Northern District of California,

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San Francisco, California,

Attorney for Plaintiff and Appellee.

In the District Court of the United States for the
Northern District of California,
Southern Division

No. 31255 H

UNITED STATES OF AMERICA,

against

JULIUS WILD,

INDICTMENT

(Sec. 145 (b), Internal Revenue Code;
26 U.S.C., 145 (b))

The grand jury charges:

That on or about the 15th day of March, 1942, in the Northern District of California, and within the jurisdiction of this Court, Julius Wild, late of Redwood City, who during the calendar year 1941 was married and had no dependents, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1941 by filing and causing to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of California, at San Francisco, a false and fraudulent income tax return wherein he stated that his net income for said calendar year, computed on the community-property basis, was the sum of \$3,398.50 and that the amount of tax due and owing thereon was the sum knew, his net income for the said calendar year, of \$270.66, whereas, as he then and there well

computed on the community-property basis, was the sum of \$9,137.77, upon which said net income he owed to the United States of America an income tax of \$1,303.34.

(Sec. 145 (b), Internal Revenue Code; 26 U.S.C., 145 (b). [1*])

SECOND COUNT

The grand jury further charges:

That on or about the 15th day of March, 1943, in the Northern District of California, and within the jurisdiction of this Court, Julius Wild, late of Redwood City, who during the calendar year 1942 was married and had no dependents, did wilfully and knowingly attempt to defeat and evade a large part of the income tax due and owing by him to the United States of America for the calendar year 1942 by filing and causing to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of California, at San Francisco, a false and fraudulent income tax return wherein he stated that his net income for said calendar year, computed on the community-property basis, was the sum of \$5,176 and that the amount of tax due and owing thereon was the sum of \$964.72, whereas, as he then and there well knew, his net income for the said calendar year, computed on the community-property basis, was the sum of

* Page numbering appearing at foot of page of original certified Transcript of Record.

\$17,149.83, upon which said net income he owed to the United States of America an income tax of \$5,427.36.

(Sec. 145(b) Internal Revenue Code; 26 U.S.C., 145 (b)) [2]

THIRD COUNT

The grand jury further charges:

That on or about the 15th day of March, 1944, in the Northern District of California, and within the jurisdiction of this Court, Julius Wild, late of Redwood City, who during the calendar year 1943 was married and had no dependents, did wilfully and knowingly attempt to defeat and evade a large part of the income and victory tax due and owing by him to the United States of America for the calendar year 1943 by filing and causing to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of California at San Francisco, a false and fraudulent income and victory tax return wherein he stated that his net income, computed on the community-property basis, was the sum of \$4,201.82 and that the amount of tax due and owing thereon was the sum of \$829.78, whereas, as he then and there well knew, his net income for the said calendar year, computed on the community-property basis, was the sum of \$17,198.91, upon which said net income he owed to the United States of America an income and victory tax of \$5,919.80.

(Sec. 145(b) Internal Revenue Code; 26 U.S.C., 145 (b))

A True Bill.

JOHN F. MOTT,
Foreman.

FRANK J. HENNESSY,
United States Attorney.

(Approved as to form: R. B. McM.

[Endorsed]: Filed Feb. 18, 1948. [3]

District Court of the United States, Northern
District of California, Southern Division

At a stated term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 15th day of March, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable George B. Harris, District Judge.

[Title of Cause.]

ARRAIGNMENT

This case came on regularly this day for arraignment of defendant, Julius Wild, who was present with his attorney, Louis Ashe, Esq. E. H. Henes, Esq., Assistant United States Attorney, was present on behalf of the United States.

On motion of Mr. Henes, the defendant was called for arraignment. The defendant was informed as to the return of the Indictment by the

United States Grand Jury, and asked if he was the person named therein, and upon his answer that he was and that his true name was as charged, thereupon Mr. Belli waived the reading of the Indictment and advised that defendant had heretofore received copy thereof. Defendant stated that he understood the charge against him.

Ordered that this case be continued to March 29, 1948, to plead. [4]

District Court of the United States
Northern District of California,
Southern Division

At a stated term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 29th day of March, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable George B. Harris, District Judge.

[Title of Cause.]

PLEA OF "NOT GUILTY"

This case came on regularly this day for entry of plea of defendant, Julius Wild, who was present in proper person and with counsel, Louis Ashe, Esq. Reynold H. Colvin, Esq., Assistant United States Attorney, was present on behalf of the United States.

The defendant was called to plead and thereupon said defendant pleaded "Not Guilty" to the Indictment filed herein against him, which said plea was ordered entered. Defendant requested trial by jury. Ordered that this case be continued to May 25, 1948, for trial. (Jury) [5]

District Court of the United States
Northern District of California,
Southern Division

At a stated term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 10th day of August, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable George B. Harris, District Judge.

[Title of Cause.]

MINUTES OF TRIAL

This case came on regularly this day for trial of defendant, Julius Wild, who was present with his attorneys, Melvin Belli, Esq., and Louis Ashe, Esq. Robert B. McMillan, Esq., Assistant United States Attorney, was present on behalf of the United States. Walter M. Campbell, Jr., Esq., Regional Attorney for the Collector of Internal Revenue, was also present. Thereupon the following named

persons, viz: Grace F. Bridges, Charles P. Maletton, Mrs. Augusta Balch, Grant S. Morris, Benjamin T. Benson, John H. Shelly, Mrs. Anna B. Roan, Henry T. S. Johnson, Jr., Thomas M. Jackson, Clarence C. Bailey, James H. Booker, Mrs. Audrey Allen, twelve good and lawful jurors, were, after being duly examined under oath, sworn to try the issues joined in this case.

The hour of adjournment having arrived, and the Court having duly admonished the jury herein, it is Ordered that the further trial of this case be continued to August 11, 1948, at 10 a.m. [6]

District Court of the United States
Northern District of California,
Southern Division

At a stated term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 11th day of August, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable George B. Harris, District Judge.

[Title of Cause.]

MINUTES OF TRIAL

The parties hereto and the jury impaneled herein being present as heretofore, the further trial of this case was this day resumed. Mr. McMillan made

an opening statement to the Court and jury. Angelo Triedmoe, Julius Krakauer, were sworn and testified on behalf of the United States. Mr. Campbell introduced in evidence and filed U. S. Exhibits Nos. 1 to 9 inclusive. Mr. Belli introduced in evidence and filed Defendant's Exhibit B.

The hour of adjournment having arrived, and the Court having duly admonished the jury herein, it is ordered that the further trial of this case be continued to August 12, 1948, at 10 o'clock a.m. [7]

District Court of the United States
Northern District of California,
Southern Division

At a stated term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 12th day of August, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable George B. Harris, District Judge.

[Title of Cause.]

MINUTES OF TRIAL

The parties hereto and the jury impaneled herein being present as heretofore, the further trial of this case was this day resumed. Julius Krakauer was recalled for further testimony. Chester J. Lippert,

Wm. R. Burkett and Hubert Mytinger were sworn and testified on behalf of the United States. Mr. Campbell introduced in evidence and filed U. S. Exhibits Nos. 12 and 13. Mr. Belli introduced in evidence and filed Defendant's Exhibits C and D. Thereupon the Government rested its case. Mr. Belli made an opening statement to the Court and jury on behalf of the defendant. Robert E. Hughes was sworn and testified for the defendant.

The hour of adjournment having arrived, and the Court having duly admonished the jury herein, it is Ordered that the further trial of this case be continued to August 13, 1948, at 2 o'clock p.m. [8]

District Court of the United States
Northern District of California,
Southern Division

At a stated term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 13th day of August, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable George B. Harris, District Judge.

[Title of Cause.]

MINUTES OF TRIAL

The parties hereto and the jury impaneled herein being present as heretofore, the further trial of this

case was this day resumed. Robert E. Hughes was recalled and further testified for the defendant. Robert F. Callahan, Samuel Zeman, Harry I. Hicks were sworn and testified on behalf of defendant. Mr. Belli introduced in evidence and filed Defendant's Exhibits E, G, H, I. Mr. Campbell introduced in evidence and filed U. S. Exhibit No. 15.

The hour of adjournment having arrived, and the Court having duly admonished the jury herein, it is Ordered that the further trial of this case be continued to August 17, 1948, at 10 o'clock a.m. [9]

District Court of the United States
Northern District of California,
Southern Division

At a stated term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 17th day of August, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable George B. Harris, District Judge.

[Title of Cause.]

MINUTES OF TRIAL

The parties hereto and the jury impaneled herein being present as heretofore, the further trial of this case was this day resumed. Jos. Sammut, Emma M. Wild and Julius Wild were sworn and testified on

behalf of the defendant. Mr. Belli introduced in evidence and filed Defendant's Exhibit L.

The hour of adjournment having arrived, and the Court having duly admonished the jury herein, it is ordered that the further trial of this case be continued to August 18, 1948, at 10 o'clock a.m. [10]

District Court of the United States
Northern District of California,
Southern Division

At a stated term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Wednesday, the 18th day of August, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable George B. Harris, District Judge.

[Title of Cause.]

MINUTES OF TRIAL

The parties hereto and the jury impaneled herein being present as heretofore, the further trial of this case was this day resumed. Julius Wild was recalled and further testified in his own behalf. William Burkett was recalled and further testified on behalf of defendant. A. L. Bougher was sworn and testified for defendant. Julius Krakauer was recalled by the defendant for further cross-examination. Mr. Belli introduced in evidence and filed

Defendant's Exhibit M. Mr. Campbell introduced in evidence and filed U. S. Exhibit No. 17.

The hour of adjournment having arrived, and the Court having duly admonished the jury herein, it is ordered that the further trial of this case be continued to August 19, 1948, at 10 o'clock a.m. [11]

District Court of the United States
Northern District of California,
Southern Division

At a stated term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 19th day of August, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable George B. Harris, District Judge.

[Title of Cause.]

MINUTES OF TRIAL

The parties hereto and the jury impaneled herein being present as heretofore, the further trial of this case was this day resumed. Julius Krakauer was recalled for further cross-examination. Emma Wild and Julius Wild were recalled and further testified on behalf of defendant. Mr. Belli introduced in evidence and filed Defendant's Exhibit O. Thereupon the defendant rested. William Burkett and Samuel Zemon were recalled and further testified on behalf

of the United States, in rebuttal. The Government then rested its case.

After hearing the opening argument of Mr. Campbell to the jury, and the hour of adjournment having arrived, and the Court having duly admonished the jury herein, it is ordered that the further trial of this case be continued to August 20, 1948, at 10:30 a.m. [12]

District Court of the United States
Northern District of California,
Southern Division

At a stated term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Friday, the 20th day of August, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable George B. Harris, District Judge.

[Title of Cause.]

MINUTES OF TRIAL AND VERDICT
OF JURY

The parties hereto and the jury impaneled herein being present as heretofore, the further trial of this case was this day resumed. Mr. Belli made his argument to the jury. Mr. Campbell made his closing argument to the jury.

After the arguments of counsel and the instruc-

tions of the Court, the jury retired at 4:26 p.m. to deliberate upon its verdict. At 6:22 p.m. the jury returned into Court and upon being asked if they had arrived at a verdict, replied that they had and presented the following verdict which was ordered filed and recorded, viz:

“We, the jury, find as to the defendant at the bar as follows:

Guilty as to the 1st Count of the Indictment

Guilty as to the 2nd Count of the Indictment

Guilty as to the 3rd Count of the Indictment

HENRY T. S. JOHNSON, JR.,
Foreman.”

The jury upon being asked if said verdict as recorded was its verdict, each juror replied that it was. It is ordered that the jury be discharged from further consideration of this case [13] and from attendance upon the Court until notified.

Mr. Ashe then made a motion for new trial and motion for judgment of acquittal, notwithstanding the verdict, which motions were ordered denied. Mr. Ashe then made a motion for probation on behalf of defendant and for a pre-sentence investigation, which motion was referred to the Probation Officer of this Court for investigation and report.

Ordered that this case be continued to September 20, 1948, at 2 o'clock p.m. for pronouncing of judgment. On motion of Mr. Ashe, it is further ordered that the defendant remain at large on the bond heretofore filed. [14]

[Title of District Court and Cause.]

VERDICT

We, the Jury, find as to the defendant at the bar as follows:

Guilty as to the 1st Count of the Indictment.

Guilty as to the 2nd Count of the Indictment.

Guilty as to the 3rd Count of the Indictment.

HENRY T. S. JOHNSON, JR.,
Foreman.

[Endorsed]: Filed Aug. 20, 1948. [15]

District Court of the United States
Northern District of California,
Southern Division

At a stated term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 20th day of September, in the year of our Lord one thousand nine hundred and forty-eight.

Present: The Honorable George B. Harris, District Judge.

[Title of Cause.]

SENTENCE

This case came on regularly this day for the pronouncing of judgment upon the defendant, Julius Wild, who was present in proper person and with his attorneys, Melvin Belli, Esq., and Louis Ashe,

Esq. Robert B. McMillan, Esq., Assistant United States Attorney, was present on behalf of the United States. G. Albert Wahl, Probation Officer, was present.

The defendant was called for judgment. Due consideration having been had on the report of the Probation Officer, it is Ordered that the defendant be denied probation. After hearing the defendant and the attorneys, and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant, Julius Wild, for the [16] offense of which he stands convicted on his plea of Not Guilty and the verdict of the jury of guilty of the offense charged in the **Indictment** filed herein against him, be and he is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of two (2) years on each of Counts One, Two and Three of the Indictment, said terms of imprisonment to run concurrently.

It Is Further Ordered that said defendant pay a fine to the United States of America in the sum of five thousand dollars (\$5,000.00) on Count One of the Indictment.

It Is Further Ordered that said defendant pay

costs of prosecution in the sum of seventy dollars and twenty-two cents (\$70.22).

It Is Ordered that judgment be entered herein accordingly.

It Is Further Ordered that the Clerk of this Court deliver a certified copy of the judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

The Court recommends commitment to a special type institution, as Medical Center, Springfield, Missouri.

Counsel for defendant made a motion for stay of execution of judgment for period of one (1) week, which motion was ordered denied. Further ordered that said defendant be held in the County Jail in San Francisco, California, pending commitment as aforesaid. [17]

District Court of the United States for the Northern
District of California, Southern Division

No. 31255 H

UNITED STATES OF AMERICA

v.

JULIUS WILD.

JUDGMENT AND COMMITMENT

On this 20th day of September, 1948, came the attorney for the government and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of violation (Sec. 145(b), Internal Revenue Code; 26 U.S.C., 145(b) defendant unlawfully and wilfully attempted to defeat and evade income taxes due the United States of America for the calendar years 1941, 1942 and 1943, as charged in the Indictment Three Counts and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of two (2) years on each of Counts One,

Two and Three, said sentences to run concurrently.

It Is Further Ordered that said defendant pay a fine to the United States of America, in the sum of five thousand dollars (\$5,000.00) on Count One of the Indictment.

It Is Further Ordered that said defendant pay costs of prosecution in the sum of seventy dollars and twenty-two cents (\$70.22).

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

GEORGE B. HARRIS,
United States District Judge.

Examined by:

ROBERT B. McMILLAN,
Asst. U. S. Attorney.

The Court recommends commitment to a special type institution, as Medical Center, Springfield, Missouri.

JOHN E. SCHAEFFER,
Deputy.

Filed and entered this 28th day of September, 1948, C. W. Calbreath, Clerk.

Entered in Vol. 39, Judg. Book at Page 348. [18]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the Above-entitled Court:

Comes now Defendant in the above-entitled matter and appeals from the judgment of the Court, the Honorable George B. Harris presiding, and complying with Rule 37, Rules of Criminal Procedure, District Courts of the United States, represents that:

I.

Defendant is Julius Wild, of 1235 Whipple Road, Redwood City, State of California, and his attorney is Melvin M. Belli, Esq., of 240 Stockton Street, San Francisco, California.

II.

Defendant was charged by the Grand Jury on three counts alleging violation of Sec. 145(b), Internal Revenue Code, 26 U.S.C. 145(b).

III.

On the 20th day of September, 1948, a jury having theretofore returned a verdict on all three counts alleged by the Plaintiff, the Defendant was sentenced in said District Court by [19] the Honorable George B. Harris to a term of two years in the Federal Sanitarium at Springfield, Missouri, and fined the sum of Five Thousand Dollars.

IV.

Defendant, through his attorney, now appeals

from said judgment and all of it to the Circuit Court of Appeals for this District.

MELVIN M. BELLI,
Attorney for Defendant.

[Endorsed]: Filed Sept. 27, 1948. [20]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 20 pages, numbered from 1 to 20, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of United States of America vs. Julius Wild, No. 31255 H, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$8.00 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 26th day of October, A. D. 1948.

(Seal)

C. W. CALBREATH,
Clerk.

In the Southern Division of the United States
District Court for the Northern District of Cali-
fornia

Before: Hon. George B. Harris, Judge.

No. 31,255-H

UNITED STATES OF AMERICA

vs.

JULIUS WILD,

Defendant.

REPORTER'S TRANSCRIPT

Tuesday, August 10, 1948

Appearances: For the United States: Robert B. McMillan, Esq., Assistant United States Attorney, Walter M. Campbell, Jr., Esq. For the Defendant: Melvin Belli, Esq.

(A jury was duly impaneled and sworn to try the above-entitled cause, after which an adjournment was taken until tomorrow, Wednesday, August 10, 1948, at 10:00 o'clock a.m.) [1*]

Wednesday Morning Session, August 11, 1948
10:00 a.m.

The Clerk: United States v. Julius Wild, on trial.

Mr. McMillan: Ready.

Mr. Belli: Ready.

The Court: Is it stipulated that the jurors are present?

Mr. McMillan: So stipulated.

Mr. Belli: Stipulated.

The Court: You may proceed with the opening statement.

Mr. McMillan: At this time, may it please Your Honor, the Government presents its proposed instructions to the jury and I have a copy which I am handing to Mr. Belli, counsel for the defendant.

Mr. Belli: Didn't you give us a copy last night?

Mr. McMillan: No, we did not. Mr. Belli furnished us a copy a moment ago of the instructions requested by the defendant.

OPENING STATEMENT ON BEHALF OF THE UNITED STATES

Mr. McMillan: Ladies and gentlemen of the jury, at this time, at this stage of the case, it is not only appropriate, but it is indeed required by the Government to make an opening statement of the nature of this case and what it expects to prove in order to substantiate the charge made against the defendant, Julius Wild. It will necessarily be brief, rather sketchy. The purpose is simply to adequately inform you so that [2] you may move along with the evidence more understandingly as it comes in and as it may develop.

It should be kept steadily in sight, ladies and gentlemen of the jury, that statements by counsel at this time or any stage of the game by any counsel as to what the evidence is, is not the evidence itself. The evidence itself comes from the lips of the witnesses who are sworn to testify in this case and

from the documentary proof, the records which will be produced here for your inspection and examination; all evidence to be controlled and guided by the rulings of His Honor and the instructions which he will give you at the close of the case.

Now, the first count of this indictment charges that Julius Wild wilfully attempted to evade and defeat a large part of his individual income tax for the calendar year 1941 by filing a false and fraudulent income tax return wherein he alleged his net income was the sum of \$3398.50, and that he owed \$270.66 in taxes to the United States; whereas his actual net income on community property basis was \$9137.77, and he actually owed to the United States a total amount of \$1303.34. In other words, it is charged that the defendant wilfully attempted to evade and defeat payment of taxes for the calendar year 1941 by means of filing a false and fraudulent return; the amount which he wilfully attempted to defeat and evade payment of in the first count of the indictment is \$1032.68.

It is to be noted that mention has been made that this [3] return was on a community property basis. The Federal Statute recognizes the community property law, and under the community property law each spouse is entitled to make a separate return, make a return of half of the amount, and the other spouse makes a return on the other half. What is charged here concerns the half only of the defendant Julius Wild.

The second count charges that Julius Wild wilfully attempted to evade and defeat a large part of

his income tax for the calendar year 1942 by filing a false and fraudulent income tax return wherein he alleged his net income was \$5176, and that he owed income tax to the United States in the total amount of \$964.72; whereas the actual fact was that his net income was \$17,149.18 on a community property basis; that is, one-half of the income. He actually owed taxes to the United States in the total amount of \$5427.36. That is, Julius Wild is charged with having attempted to evade and defeat payment of income taxes for that year of 1942 the difference between \$5427.36 and the amount that he paid, \$964.72, being \$4462.64.

Now, the third count of the indictment is for the calendar year 1943 and it charges in that count that the defendant Julius Wild wilfully attempted to evade and defeat a large part of his individual income tax for the calendar year 1943 by filing a false and fraudulent income tax return wherein he alleged that his net income on the community property basis was the sum of \$4201.82, and that he owed \$829.78 in taxes to the [4] United States; whereas his actual income, taxable net income on a community property basis, was \$17,198.91, and he actually owed taxes to the United States in the total amount of \$5919.80. So that for the calendar year 1943 Julius Wild is charged with having attempted wilfully to evade and defeat payment of income taxes in the sum of \$5919.80.

Now, taking the three counts and adding them up, the total amount would be \$10,585.34 that he is charged with having attempted wilfully to evade

and defeat payment of. For easy recollection you can carry it as approximately \$10,500.

And as I have stated, being on a community property basis, the return for both of them would be just twice that amount; that is, \$21,000.

The evidence in this case which the Government will present, ladies and gentlemen, will show that the defendant Julius Wild, during the years here involved, 1941, 1942 and 1943 operated what is known as a bookie establishment at 1182 Market Street, San Francisco; that it was in the basement of the Marshall Square Building. That is where the Orpheum Theater is located. It was a gambling enterprise, engaged in betting on horseraces. The evidence will show that it was a very large enterprise, that he had a very large business for the three years involved, and he described it in the 1942 individual income tax return as a "brokerage business."

Now, it should be said at the outset, ladies and gentlemen, [5] that we are not concerned here in this case about this gambling business as being an illegal business. That is not our concern. The indictment charges simply and only an evasion and defeat, an attempt to evade and defeat payment of income taxes. We have nothing to do here with illegal gambling. But the income tax law does provide that it matters not from what source the income is obtained, whether from gambling or any illegal enterprise, income taxes must be paid. And in this case, notwithstanding that it was an illegal enterprise, income taxes had to be paid; but it is

to be borne in mind steadily that there is no charge of that kind here against the defendant of carrying on and conducting an illegal enterprise or business.

The witnesses which the Government will produce here to testify to the extent of the defendant's business and who will produce records, documentary proof showing his large income for the years stated and balancing up in the amounts set forth in the indictment will be former employees of Mr. Wild's. They worked there in this gambling enterprise.

The Government will produce the person who was responsible for the employees, who made up the books, who made up the entries. And the Government will in fact produce here the original cards of entries, the original records making up the accounts that were kept by this bookkeeper.

The testimony of the witnesses will show that a very large amount of money was handled in each week in this establishment [6] located at 1182 Market Street. It will show that the income was several times the amount set forth in the return of the defendant Julius Wild.

For example, the evidence will show that during the month of January 1941 the records showed the gross take was \$46,492, and during that month Wild make a taxable net profit of over \$1500.

For the year 1941 these records will show that the gross amount of money taken over the counter was over \$385,000 and the total taxable net profit was almost \$18,000.

For 1942 the evidence will show that the gross

take was approximately \$570,000 and that taxable net profit thereon was about \$35,000.

For 1943 the evidence will show that the gross take was over \$500,000, with net profit of \$30,000.

During the three year period Wild reported a total net profit of \$12,776.32.

Another employee of this bookie establishment to be produced here to give testimony and he will testify that the above mentioned records as I spoke of were those regularly maintained for Julius Wild to show his business profits, and that he, the employee, made entries on those records. He will testify that those records actually reflect the amount of money that was taken in and the expenses paid out.

The Government will show by the evidence in this case, [7] may it please Your Honor and ladies and gentlemen of the jury, that when the defendant Julius Wild filed these income tax returns that he knew that they were false and that he wilfully attempted to evade and defeat payment of these taxes.

In short, ladies and gentlemen of the jury, the Government intends to and will prove every material allegation of the indictment to a moral certainty and beyond a reasonable doubt. And so proving it, to that degree it confidently expects that you will return a verdict of guilty on each of the three counts.

Mr. Belli: May we reserve our opening statement, Your Honor, until just before we put on our defense?

The Court: You may, Mr. Belli.

Mr. Belli: And our instructions that I have handed two copies to the United States Attorney, may we hand to the Clerk?

The Court: Yes. You may proceed, Mr. McMillan.

ANGELO TVEITMOE

called as a witness on behalf of the United States, sworn.

The Clerk: Q. Will you state your name to the Court and jury?

A. Angelo Tveitmoe.

Direct Examination

Mr. Campbell: Q. What is your business or occupation, [8] Mr. Tveitmoe?

A. I am an employee in the office of the Collector of Internal Revenue.

Q. Is that the Collector of Internal Revenue for the First Collection District of California with principal offices in this city? A. Yes.

Q. And what is your title in that office?

A. I have been Chief of the Audit Section for a number of years.

Q. How long have you been Chief of the Audit Section?

A. Well, since it was inaugurated way back in about 1924, I think it was.

Q. Now, the Collector of Internal Revenue for the First District of California here in San Francisco is, is it not, the office designated by law to receive income tax returns of residents of this

(Testimony of Angelo Tveitmoe.)

vicinity? A. It is.

Q. Now, Mr. Tveitmoe, as Chief of the Audit Section, do you have access to and a measure of control over the official files and records of the Collector? A. We do.

Q. You have been asked to produce certain income tax returns heretofore filed with the Collector of Internal Revenue. I will ask you if you have produced a return filed by or on behalf of Julius Wild for the calendar year 1941. [9]

A. I have.

Q. Do you have that return here?

A. It is in my possession here.

Q. Will you state upon what date that return was filed with the Collector?

A. That return was filed in March——

Mr. Belli: That would appear on the face, wouldn't it?

Mr. Campbell: Yes, but I want it for the record.

The Witness: The return was filed March 10, 1942.

Mr. Campbell: Q. You have a photostatic copy of that? A. Yes, I have.

Mr. Campbell: I will show this to counsel.

I am going to offer as Government Exhibit No. 1 the return for 1941 of Julius Wild, 1182 Market Street, to which I desire to attach a photostatic copy with permission to withdraw the original at the end of the case.

The Court: So ordered.

(Testimony of Angelo Tveitmoe.)

(Income tax return of Julius Wild for the calendar year 1941 was received in evidence and marked United States Exhibit No. 1.)

Mr. Campbell: Q. Have you also produced the return of Julius Wild for the calendar year of 1942? A. This is it.

Q. And on what date was it filed?

A. This return was filed March 15, 1943. [10]

Q. You have also produced a photostatic copy of this return? A. Yes.

Mr. Campbell: This will be offered as Government Exhibit No. 2 in evidence to which I attach a photostatic copy and ask leave of the Court to withdraw the original at the termination of the trial.

Mr. Belli: So stipulated, Your Honor.

The Court: So ordered.

(Income tax return for the calendar year 1942 was thereupon received in evidence and marked United States Exhibit No. 2.)

Mr. Campbell: Q. Have you also produced the individual income tax return of Julius Wild for the calendar year 1943?

A. Yes, sir, and this return was filed March 15, 1944, and a photostat accompanies it.

Mr. Campbell: This will be offered as Government Exhibit 3 to which is attached a photostatic copy, and I ask leave of Court to withdraw the original at the termination of the trial.

The Court: So ordered.

(Testimony of Angelo Tveitmoe.)

(Income tax return for the calendar year 1943 was thereupon received in evidence and marked United States Exhibit No. 3.)

Mr. Campbell: Q. Have you also produced the returns filed by or on behalf of Emma Wild, the wife of Julius Wild? A. Yes. [11]

Q. Do you have the 1941 return?

A. Yes, I have the 1941 return.

Q. On what date was it filed?

A. It was filed on March 4, 1942, and there is a photostat, also, of that.

Mr. Belli: I may be premature in making the objection on this, Your Honor. We might hold it in reservation. However, I desire for the record at this time to object to the returns of the wife, even though they be community property returns, as not binding on Mr. Wild.

Mr. Campbell: May I inquire if the objection is on the basis of non-signature—?

Mr. Belli: No, if you tell me it is, I will accept it.

Mr. Campbell: It is.

Mr. Belli: All right.

Mr. Campbell: I offer this in evidence.

Mr. Belli: Objection thereto and exception.

The Court: It may be received and appropriately marked.

(Income tax return of Emma Wild for the calendar year 1941 was thereupon received in evidence and marked United States Exhibit No. 4.)

(Testimony of Angelo Tveitmoe.)

Mr. Campbell: Q. Have you also produced the return of Emma Wild, the wife of Julius Wild, for the calendar year 1942? A. Yes. [12]

Q. When was it filed?

A. It was filed February 22, 1943, and there is a photostat of that also.

Mr. Belli: Same objection.

Mr. Campbell: I make the offer of this return——

Mr. Belli: But stipulated it is an original, though.

Mr. Campbell: (Continuing): ——as Government Exhibit No. 5 and attach a photostat and ask leave to withdraw the original at the termination of the trial.

The Court: So ordered.

(Income tax return of Emma Wild for the calendar year 1942 was thereupon received in evidence and marked United States Exhibit No. 5.)

Mr. Belli: And may we have our objection note an exception, please, Your Honor?

The Court: Objection overruled and exception noted.

Mr. Campbell: Q. Have you also produced the return of Emma Wild for the calendar year 1943?

A. Yes, I have.

Q. What day was it filed?

A. March 15, 1944.

Q. You have a photostat of that?

A. This is it.

(Testimony of Angelo Tveitmoen.)

Mr. Campbell: This will be offered as Government Exhibit No. 6, the photostatic copy, and leave will be asked of the [13] Court to withdraw the original at the termination of the trial.

The Court: So ordered.

Mr. Belli: Same stipulation, same objection and exception.

The Court: Objection overruled and exception noted.

(Income tax for Emma Wild for the calendar year 1943 was thereupon received in evidence and marked United States Exhibit No. 6.)

Mr. Campbell: You may cross examine.

Mr. Belli: I have no questions.

Mr. Campbell: May this witness be excused?

The Court: Are there any questions?

Mr. Belli: No, Your Honor.

The Court: You may be excused.

JULIUS KRAKAUER

called as a witness on behalf of the United States, sworn.

The Clerk: Q. Will you state your name to the Court and jury?

A. Julius Krakauer.

Direct Examination

Mr. Campbell: Q. Mr. Krakauer, what is your present occupation?

(Testimony of Julius Krakauer.)

A. I am temporarily helping out in an office in an organization in which I have a small investment, because one of the [14] principals is ill.

Q. What is the name of that organization?

A. The Columbia School of Commercial Art. I haven't been there long enough and I am a little confused in the name.

Q. Are you acquainted with the defendant Julius Wild, Mr. Krakauer? A. Yes.

Q. For how long a period have you known him?

A. I knew him down in Texas before he came up here and before I came up here. Oh, I have known Julius Wild, probably 30-odd years. I wouldn't want to say exactly, though.

Q. Were you ever employed by the defendant Julius Wild? A. Yes, sir.

Q. And for what period of time?

A. Oh, around about 1936, I should say, to September 1943. Now, I am not sure of those dates because one forgets things. It was six or seven years anyway, I imagine.

Q. During the years 1941, 1942 and until September of 1943, were you employed by him?

A. Yes, sir.

Q. And at what location?

A. At 1182 Market Street, Marshall Square Building, ordinarily known as the Orpheum Building in those days.

Q. What was the nature of the business in which you were employed by him? [15]

(Testimony of Julius Krakauer.)

A. What is ordinarily known as a bookie joint, a bookie establishment.

Q. You refer to an establishment that accepts bets on horseracing? A. Yes.

Q. And in what part of the Marshall Square Building that you referred to at 1182 Market Street was this business devoted to?

A. A goodly portion of the basement.

Q. Was it located in that same portion of the building throughout the period 1941, 1942 and until September of 1943 when your employment terminated? A. Yes.

Q. Always at the same location?

A. Yes, sir.

Q. And you say you went to work for him in 1936? A. Yes.

Q. Prior to 1941 were you employed in the same type of business by him? A. Yes, sir.

Q. And was it at that same location?

A. My entire employment was at that same location.

Q. From 1936 until you left in September of 1943?

A. Yes, sir. However, I should like to amend that because it might come up, to this extent, at one time when there was "heat" on, as is known in the bookie trade, why, we occupied a [16] room upstairs in the same building and relayed bets downstairs, which portion of the establishment was closed at that time. I just want to put that in because that may come up.

(Testimony of Julius Krakauer.)

Q. When was that?

A. I wouldn't want to say.

Q. Was it during 1940?

A. It was prior to 1941, 1942 and 1943.

Q. It was prior to the period here in question?

A. Yes. [17]

Q. It was prior to the period here in question?

A. Yes.

Q. Will you state, briefly, the nature of your duties in connection with your employment by Mr. Wild in this bookie establishment, as you put it?

A. When I first went in there, I was purely a ticket writer——

Q. No, let us take the answer in question.

A. I was one of the ticket writers and also handled the funds and took care of them, took them, first, to the Number 1 Bank of America branch at Powell Street. No, it was then on the corner of Mason.

Q. What other duties did you have?

A. It was the Day and Night Bank and it took them in the evening—safe deposits, and brought them back in the morning, and accounted for them, and later on I was appointed to and kept the records of the establishment in the way of profits and losses and all other such.

Q. During the years 1941, 1942, and up until September of 1943, did you keep the records of the daily receipts and expenditures of the business?

A. Yes, sir.

Q. Will you state, for the benefit of the jury,

(Testimony of Julius Krakauer.)

Mr. Krakauer, approximately the size of the establishment there in the basement of the Marshall Square building? A. In floor space? [18]

Q. Yes, in the floor space.

A. Oh, probably fifty feet one way and a couple of 100 the other way. I never measured it.

Q. How was access gained to the basement? By stairs or elevator or both?

A. It had two entrances. You could come in by the elevator and enter what was known as the back office in front of the elevator; or there was another entrance via, or above the elevator discharge, where there were two doors. Then there was the regular customer entrance down the stairway and into the front end of the establishment.

Q. Was that entrance you refer to as the regular customer entrance from the lobby of the building or the street?

A. It was from the lobby of the building. You came off the street into the lobby and then down this stairway.

Q. Will you describe the equipment, that is to say, the furnishings of this establishment as it existed through 1941, 1942, and 1943.

A. Well, it was very spacious. It had chairs, comfortable chairs, tables, some round and some square; and it was very profuse in the information that it gave to customers in the way of bulletin boards.

Q. What do you mean by that?

A. All newspaper entries for the day, selections,

(Testimony of Julius Krakauer.)

and the copies of the Racing Form split, so the various pages, from page to [19] page, could be seen. That required several copies to split them—and all other information of that character that is usually, but not as profusely, displayed as in this establishment, because it was well known.

Q. Were there also counters?

A. Yes, there were counters. And as you came back, in the back of the office there was a counter with two ticket writers, one of which I was, in addition to the duties I spoke of a moment ago of performing.

Q. Was there also a cashier's cage?

A. Yes, there was.

Q. Were the ticket writers in the cage?

A. No, they were out in the middle on an apparatus which was hung with run-down sheets, giving the horses by number. You did not bet by name of horse, but by number.

Q. We will come to that in a moment.

A. Yes.

Q. You have spoken of information provided for customers. It is true there are a large number of publications printed and circulated concerning entries of horses in races at various tracks, and also a purported expert selections of probable winners in each race. Is that correct? A. Yes, sir.

Q. Were those various publications regularly subscribed to as a portion of the business provided to customers coming in [20] to the place of business to place bets?

(Testimony of Julius Krakauer.)

A. Not all of them, but a good many of them were, and were displayed on these bulleting boards simultaneously.

Q. Let me ask you this, preliminarily: How many days were you operating during the years 1941, 1942, and up until September of 1943 when you left?

A. Six days a week. Well, of course there were some days—I wouldn't say definitely it was always six days a week, because when the California tracks alone were operating, they didn't operate on Monday and we would only work the five days; but there were very few of those.

Q. Did you operate every day there were any tracks running in the United States?

A. Any days that the "Service," as we call it, gives information on which to work.

Q. We will come to that in a moment. Tell me now, in connection with the operation of the business during the years in question, was there "Service" utilized, whereby information pertaining to races being run at the various tracks including running information as to the progress of particular races and announcements of the winners of the races and the prices paid at the tracks, for bets, was publicly announced in any of the establishments?

A. Yes, sir.

Q. Will you describe the equipment used for that purpose, [21] that is to say, was there a loud speaker?

A. There was a loud speaker rented from an

(Testimony of Julius Krakauer.)

establishment. Well, I don't think it was an establishment, I think it was a personal business of an operator. If he rents these loud speakers to the various establishments engaged in this character of business.

Q. Was the loud speaker and its renting separate and distinct from the "Service," that is to say, the information that came in for dissemination over the loud speaker?

A. Yes, sir, entirely. They just give us the benefit of the running of the race and the results, you understand, over the loud speaker.

Q. As I understand you, one concern supplied the loud speaker, and another concern supplied the information for your broadcast over the loud speaker.

A. They were purely the mechanical end of it, that's right. [22]

Q. Yes, in connection with the loudspeaker, there was a wire service which supplied the information regarding these races? A. Yes, sir.

Q. That came in over something similar to a telephone wire, is that correct?

A. I imagine so. I was never in the establishment that furnished it, but I was once told that it came into the various mikes and that the establishment was divided up so as to handle the large volume of business.

Q. And no one in your establishment announced over that loud speaker? A. No.

(Testimony of Julius Krakauer.)

Q. As far as you know, it came from the outside?
A. Yes.

Q. In connection with the operation of the bookie establishment, let me ask you whether the operation of this particular establishment for the purpose of placing bets on horseraces, did the customers come to the place of business or were the bets obtained otherwise, that is to say, by solicitation, by telephone or personally?

A. They came in 98 per cent personally. There were a few phone customers that phoned in by special arrangement; but I should say probably 99½ per cent—I wouldn't want to name the percentage—but it was pretty near 100 per cent that came down there to place bets. [23]

Q. Are you able to state the average number of customers that would come to the establishment per day during the period in question, and when I refer to the "period in question," I am referring to the years 1941, 1942, and until September of 1943.

A. It is very hard to say, sir. It was a right active spot, and oh, I should say, 100, perhaps, maybe more. It is very difficult. I handled a good many of them myself. I imagine there were that many at least—maybe more—a minimum of 100.

Q. How many employees operated this place, or how many employees operated during the period here in question?

A. Well, there were two ticket writers.

(Testimony of Julius Krakauer.)

Q. By "ticket writers" do you refer to a person or persons who accepts bets?

A. The man who took the bets down at the instance of the customers.

Q. Yes. A. And there was a cashier.

Q. That is the person that pays out the winning bet?

A. That is the person that pays out the winning bet.

Q. Yes.

A. And then there was a man who allocated and distributed the bets, establishing the position of the book in each race.

Q. In other words, he would figure the odds to be paid on each bet? [24]

A. He would separate and pile them up. A good many of our customers made bets in advance, you understand. They would go and tend to their own business and they would place a considerable number of bets in the morning, and some would come in at noon and do that. We had a little case there in which the various races were numbered and we would put these cards in and distribute them. So when the races came up, they would be drawn out of the case and laid down with the bets that were currently made on that same race. We had to have that arrangement in order to keep the position of the book in each race accurately.

Q. What other employees did you have then?

A. There was this man that did that, and Mr.

(Testimony of Julius Krakauer.)

Wild at times, and there were some others there just temporarily.

Q. You also had a doorman, did you?

A. Pardon me, that's right, I forgot him. That is very important. We had a doorman.

Q. What were his duties?

A. His duties were to be very careful to see that the right people, as it were,—that is the nearest word description of it—came into the establishment.

Q. Will you relate, Mr. Krakauer, the steps that a customer would go through in placing a bet there? Tell us how it was placed and the handling of the bet, and assume in answering the question that the particular bettor was one of the lucky [25] ones who may have won on his particular bet.

A. Well, a customer would come in, a good many of them would assemble in groups around the tables and make selections, and when it was post time or near post time they would come up there, or some of them would come before we even opened, or on the street, would say, "Place these for me," and we would distribute those in the little case I spoke of. The customer would look at the run-down sheets which were suspended above the ticket writers' station, and you would enter the bet and the position which was "A" or "B" or "C", which was win, place or show; and the amount and the initial. All bettors—well, some used the full name, but we did not encourage that because it was difficult to write in the rush of business, and they all

(Testimony of Julius Krakauer.)

had initials, or at least the majority of them. Each ticket writer had a position for his money.

Q. At the time they placed the bet, they would hand you the money?

A. At the time they placed the bet, they would hand in the money, or exact change, and we put that in the cash box.

Q. You would mark on the ticket the horse on which they bet and also win, place or show?

A. That's right, and these tickets were stamped, and it made it easy for the ticket writer. There was a number for the horse and then "A", "B" or "C", and you just entered the amount of the bet, and win, place or show. [26]

Q. And there would be initials to identify the bettor?

A. There would be initials to identify the bettor in case he won.

Q. Assuming that the race had been run and the winning horse, win, place and show, had been announced over the radio. Let me ask you this: Was it your habit to pay the track odds; that is to say, the amount paid off on bets on races which were run?

A. There were some limits. Mr. Wild's limits, as a matter of advertising value and publicity value, were sometimes a little higher than those. Up to \$5 he would pay track odds. That, of course, would limit his liability. Some of the books would do that, and Mr. Wild was right liberal in that respect.

Q. Otherwise what would he pay?

(Testimony of Julius Krakauer.)

A. 15, 6 and 3.

Q. In other words, the limit would be 15-1 on the winning horse? A. Yes.

Q. 6 to 1 on the place horse? A. Yes.

Q. And 3 to 1 on the show horse?

A. That's right. Of course, that sometimes varied according to how the competitors were operating.

Q. But that was standard odds paid?

A. Standard odds paid. [27]

Q. Well, those were standard limits?

A. Yes.

Q. Otherwise the track odds would be paid?

A. Yes, otherwise track odds would be paid.

Q. If they were less than the limit?

A. Yes, sir.

Q. Now, we have come to the point where the bettors have placed the bets with the ticket writers and the tickets have been written out, and the results have been announced. Now, what was done next?

A. As I said a moment ago, before that we would get the money and each had a box in which to throw the tickets and immediately were picked up by the person I spoke of and he would distribute them for that race being currently run, and always a race forward of that, so that he would know what the position of the book was on a race in advance. Then, after the race was run, the piles of tickets that represented the winners were picked up and this person and Mr. Wild usually assisted in that,

(Testimony of Julius Krakauer.)

being very good at figures, would figure the amount due the bettor and turn them over to the cashier, who would begin to call the bettors' initials or names and they would be paid off.

Q. That is, if they were there at that time.

A. If they were there at that time, yes.

Q. What was the custom if the bettors were not there at that [28] time?

A. They would be held until evening and if any were left, then the money was put inside and paid out the next day if they appeared to claim their bets.

Q. We will come to those. Those are known as, occasionally, "sweepers," where they were not collected.

A. Well, they will develop into that. They are not known as that in the beginning.

Q. Well, we will come to that. A. O.K.

Q. You stated, Mr. Krakauer, during the years here in question, that you kept certain records, is that correct, sir? A. Yes, sir.

Q. Will you state generally, or describe generally, the type of record which was maintained there relative to receipts and disbursements of this business?

A. Well, previous to my having been placed in charge of that particular end of it, why,—

Q. No, I am referring to 1941, 1942 and 1943, what was the type of record which was maintained there relative to receipts and disbursements in this business?

(Testimony of Julius Krakauer.)

A. They were kept on black card the same size we used to take bets on.

Q. Was there an individual card written by each day relative to that day's business? [29]

A. Yes.

Q. Was it your habit to accumulate the totals from the preceding day, day to day?

A. Yes, sir.

Q. And were those totals then gathered together for any period of time? A. One week.

Q. In other words, what would be the weekly period? Would it be the calendar week?

A. It would be from Monday to Saturday night.

Q. From Monday to Saturday night.

A. Yes, a calendar week in that respect.

Q. You would start with a fresh card on Monday morning? A. Yes.

Q. And you would enter the receipts and disbursements for that day? A. Yes, sir.

Q. And on Tuesday, what was entered on the card?

A. There was a fixed overhead like forms, newspapers,—

Q. Yes.

A. (Continuing): —which we cut up and put up on the publicity board.

Q. We will come to specific items later, but were the receipts and disbursements on Tuesday entered on that card? A. Yes. [30]

Q. And were the totals from Monday carried forward on that card? A. Yes.

(Testimony of Julius Krakauer.)

Q. What would be done with the Monday card?

A. The Monday card and all cards for that week would be kept until Saturday. Then there was a final card made on Saturday and the other five cards were destroyed. They had no further value, naturally, because the accumulation was carried forward and checked accurately every day, because there were two people involved in the making of the card.

Q. When you say there were two people involved, to whom do you refer?

A. Mr. Bob Hughes would write the daily part and I would carry forward the accumulation, based on Mr. Hughes' figures.

Q. Mr. Hughes was another employee?

A. Yes.

Q. Was that weekly accumulation you referred to on Saturday night contained on the same card on which Saturday's business, as distinguished from the other days' business, was contained?

A. Yes, it was. That card showed the five days' accumulation plus that day's business individually.

Q. In that connection, did those cards and the accumulated totals carry all of the bets received, the total of the bets received?

A. Yes sir. [31]

Q. And did it include all of the pay-outs by way of expenses? A. Yes, sir.

Q. Did you also in that connection and on those cards keep a record of the bank, that is, the amount

(Testimony of Julius Krakauer.)

of money kept on hand with which to meet current expenses?

A. Yes, sir, that is known as the "nut."

Q. That was known as the nut?

A. This is vernacular.

Q. I understand, but in that connection was a record kept of monies advanced to the bank or nut, as you refer to it, or withdrawn from day to day?

A. Each day the nut was kept at \$300. If the nut had suffered a loss, Mr. Wild was called upon to bring it up.

Q. He would bring it up sufficiently to make the difference?

A. He would bring it up to the established or required amount and was given a credit for any advances he made and debited for any withdrawals.

Q. In other words, as I understand you, at the end of the day, if the establishment had paid out more than was taken in, so [32] that the bank or nut had been impaired, and there was less than a balance of \$300, you would make up the difference before you started the next day's business, is that correct?

A. Yes.

Q. And if he had made a profit over and above the day's expenditures he would withdraw the amount over and above that at which the business started.

A. He would do that daily.

Q. He would do that daily?

A. Yes, he would do that daily.

Q. Over that period of time, in addition to the money that he may have paid in to keep the bank

(Testimony of Julius Krakauer.)

in its \$300 daily condition, or profits which he may have withdrawn, did he withdraw any regular amounts daily or weekly?

A. Yes, salary, sir.

Q. Is that what it was termed, "salary"?

A. Well, sir, we all received a salary and he regarded himself as an employee, and rightfully so, I believe, and he received a salary.

Q. It was his business, was it not?

A. Pardon me, sir?

Q. It was his business, was it not?

A. Yes.

Q. How much did he withdraw as salary?

A. \$10 in addition to the regular bonus which was paid to all [33] of us when the profits were in excess of a certain amount.

Q. \$10 a day? A. Yes, sir, \$10.

Q. Was that kept as a part of the record?

A. Yes.

Q. As well as the profits which he withdrew from the business?

A. Yes, his weekly salary was accumulated on this card the same as the others. However, that was separate from the rest of the employees' salaries, which were kept as a total, except his which was kept separate.

Q. And in connection with this bonus of \$10 a day drawn as salary, was that withdrawn prior to figuring the profit or loss of the day?

A. Yes, sir. All expenses for that day were included.

(Testimony of Julius Krakauer.)

Q. Then that included the \$10 a day salary?

A. Yes, sir, that included the \$10 a day salary and all salaries of employees and bonuses and Fixed overhead.

Q. After that was done, then the bank was examined to see if there was more or less of a balance than \$300? A. Yes.

Q. And if there was less than \$300, he paid into the bank sufficient to bring it up, and if there was more than \$300 in the bank, he withdrew the extra over and above that amount? A. Yes.

Q. Was that reflected in the cards? [34]

A. Yes.

Q. Mr. Krakauer, could you say whether or not you acknowledge any other records, whether daily or weekly or otherwise, in connection with the receipts and disbursements of the business during the period in question other than the cards to which you refer? A. Not to my knowledge.

Q. All right.

A. No, it may have been, but not to my knowledge.

Mr. Belli: I ask that go out.

The Court: Yes, the answer may go out.

Mr. Campbell: Q. Well, do you know whether any other record was kept? Answer Yes or No.

A. No.

Q. So far as you know, the cards to which you refer were the only records kept? A. Yes.

Q. That was the part of your employment, to keep those records? A. Yes, sir.

(Testimony of Julius Krakauer.)

Q. And you kept those records daily?

A. Yes, sir.

Q. To the best of your knowledge, did those records correctly reflect the receipts and disbursements of the business which you have described?

A. Yes, sir. [35]

Q. I am going to show you a group of cards, some 52, I believe, and ask you if you recognize them.

The Court: Counsel, have you seen the cards?

Mr. Belli: I don't believe I have.

Mr. Campbell: Either you or your representatives have.

The Court: We will take a short recess, ladies and gentlemen of the jury. During this period, counsel may examine these exhibits.

Again, I admonish you, ladies and gentlemen, not to discuss this case among yourselves, nor suffer any person to converse with you on any subject of the trial; and you are not to form or express an opinion thereon until the case is submitted to you.

(Recess.) [36]

The Court: You may proceed, counsel.

Mr. Campbell: Mr. Krakauer, just before the recess, I showed you a group comprising, I believe, some 52 cards.

A. Yes, sir.

Q. And I asked you if you recognized those cards.

A. I do.

Q. Will you state what they are?

A. They are—I suppose they are all here, just the way—they are the records, part of which I made, and the others were made by Mr. Bob

(Testimony of Julius Krakauer.)

Hughes, according to the writing I see here. They are the record cards which were referred to in the previous testimony.

Q. Are those the cards with reference to the business for the year 1941?

A. Let me see the dates here, and maybe I will answer that question. Yes, sir.

Q. And these are the same cards that you testified concerning keeping there during the course of the business? A. Yes, sir.

Mr. Campbell: This group will be offered as Government's exhibit next in order.

The Court: This may be received and marked.

Mr. Belli: For the record on that, so that I will not, your Honor, disturb the order of the Government's case, there are a number of cards there, and there are a number of entries [37] on them. Now by my not objecting, I don't want to be bound, or have my client bound by every entry on here. At the same time, I don't want to be so meticulous that I would suggest that every pencil mark be gone over here.

Mr. Campbell: Well, every objection will be reserved.

Mr. Belli: Yes, that is what I want to do.

The Court: Very well, that may be the understanding. You may reserve your objections.

Mr. Belli: Subject to the cards being subject to cross-examination.

Mr. Campbell: That is, not as to the cards gen-

(Testimony of Julius Krakauer.)

erally, but as to any particular item which you may want to object to?

Mr. Belli: Yes, they were kept in the ordinary course of business, and with that understanding, they may be marked.

The Court: Government's exhibit in evidence, No. 7.

(The cards referred to above were then received in evidence and marked U. S. Exhibit 7.)

Mr. Campbell: Q. I show you a second group of cards, approximately 52 more or less, and ask you if you recognize those cards. (Showing.)

A. Yes. Just a moment and I will give a little gander here. Yes, sir, they are similar to the ones you just handed me a minute ago.

Q. They were kept by you under the same circumstances as the previous set? [38]

A. Yes, sir, they seem to cover the year 1942.

Q. The year 1942? A. Yes, sir.

Q. They were kept by you in the course business there? A. Yes, sir.

Mr. Campbell: This group will be offered as Government's exhibit next in order, subject to Mr. Belli's previously stated reservation, if the court pleases.

The Court: So ordered.

The Clerk: Government's exhibit No. 8 in evidence.

(The cards referred to above were then received in evidence and marked U. S. Exhibit 8.)

Mr. Campbell: I show you a third group of

(Testimony of Julius Krakauer.)

cards, and ask you if you recognize these, sir.
(Showing.)

A. They are similar, of similar tenor, as the ones that you have previously shown me and they are for the year 1943, and they must go to September, because that is the end of that period.

Q. Well, you will examine them and see to what date those particular cards go?

A. They went to 9/25/43, which is when I left the employ of Mr. Wild. That is what I wanted to say. I wanted to make sure these were in, because I was not there beyond that date in '43.

Q. You were not there as an employe? [39]

A. Not after that date.

Q. And these cards run up until September 25, 1943?

A. Yes, sir.

Q. Were they kept by you in the regular course of business?

A. Yes.

Mr. Campbell: These will be subject as Government's exhibit next in order, subject to the reservation expressed by Mr. Belli.

The Court: So ordered.

The Clerk: Government's Exhibit Number 9 in evidence.

(Cards referred to above were then received and marked U. S. Exhibit 9.)

Mr. Campbell: Q. Now, Mr. Krakauer, I am going to show you, referring to Government's exhibit 7—and ask that you examine these cards again; there are no cards for the period of April and May, 1941. Will you examine the cards and

(Testimony of Julius Krakauer.)

ascertain if that is correct? (Handing cards.)

A. They don't appear to be here.

Q. Do you recall whether or not the business was operating or whether it was closed during that period?

A. Well, it was probably closed for the usual reason—being the heat being on, because these two cards, which were just kept from day to day for such bets as *we* were brought in by friends and others of the establishment and I see that covers that period right here. I just kept that from day to day. [40]

Q. Was it your best recollection that business was not open generally to the public during April and May of 1941?

A. This apparently must have been one of those periods, sir, judged from the information that those cards reveal.

Q. Some business was accepted during that period, however?

A. Yes, sir.

Q. All right. Now I am going to call your attention specifically, Mr. Krakauer, to the first card appearing in this group, referring to Government's Exhibit 7, and which you have identified as the cards referring to 1941, this card being marked with a red numeral 1, and a date 1-4, and I call your attention to the blank where appears "January 4, '40." And now you have identified those as referring to '41. Can you explain the fact that the year appears as 1940.

A. Well, I divided, for the purposes of con-

(Testimony of Julius Krakauer.)

venience, something that has been generally adopted by much of the business world, into weeks of the year, no matter how they came out. And apparently in making this first card, I did something that we all do when the New Year comes—I put '40 down instead of '41.

Q. Does it relate then, to the first week of '41?

A. Yes, it must of necessity; that is just one of those lapses that we all indulge in when the year changes, for a day or two. [41]

Mr. Campbell: If the Court please, at this time I wish to have marked for identification for use of the convenience of the jury in following the next testimony as to these entries, photostatic copies of the cards which are held in the hand of this witness.

The Court: So ordered.

Mr. Campbell: There are some twelve photostatic copies.

The Clerk: Any particular order in which you want those—7A, 7B, C—do you want them marked individually?

Mr. Campbell: May these be given one number for identification?

The Court: So ordered.

The Clerk: Government's Exhibit 10 for identification.

(Photostatic copies of cards referred to above were then marked Government's Exhibit No. 10 for identification.)

Mr. Campbell: With the Court's permission, I

(Testimony of Julius Krakauer.)

would like to pass these to the jury during this interrogation.

The Court: Very well.

(Government's Exhibit No. 10 for identification was thereupon handed to the jury.)

Mr. Belli: These are photostats of the exhibits that are in evidence, are they?

Mr. Campbell: Yes, that's correct; for the first card appearing in Government's Exhibit 7.

The Clerk: Exhibit No. 7. [42]

Mr. Belli: These here, what is this?

The Clerk: That is No. 7.

Mr. Campbell: Q. Mr. Krakauer, I call your attention to what appears to be the face of this card in the upper left-hand corner of which appears the figure 1. A. Yes, sir.

Q. To what does that refer?

A. First week of that year.

Q. And the numerals 1/4?

A. That is the final day.

Q. That would be the Saturday that this card represents? A. Yes, sir.

Q. This would be one of the accumulated Saturday cards, is that correct? A. Yes, sir.

Q. Now, the first item appearing on the face of this card appears to be "T" with a credit of \$3,372. Will you state what that represents?

A. That is the take for the day, the amount of the bets made by the customers.

Q. In other words, that is the amount of money that was received in this establishment on that day?

(Testimony of Julius Krakauer.)

A. Yes, sir.

Q. Is that correct, sir? A. Yes, sir. [43]

Q. And does that refer only to the day, Saturday? A. That is only the day Saturday.

Q. That is to say, the fourth day of January, 1941? A. Yes.

Q. The next item appears to be "P", "O" with a debit item of \$2,963.85. Will you state what that refers to?

A. That is the pay-out to the customers, the winning bets.

Q. The next item is "A", \$316.65, debits. What is that? A. That is expense.

Q. The next item is "OS", \$48.50, debits. Will you explain that item?

A. That is overage or short.

Q. In other words, when you counted up the cash at the end of the day, you might have more cash than you previously accounted for or less than you should have, is that correct?

A. That's correct, sir.

Q. And the debit item of \$48.50 would have indicated what?

A. Would have indicated a very bad shortage for that day; it didn't occur very often, but apparently it did on that day.

Q. A shortage of \$48.50? A. Yes, sir.

Q. All right. Then you have a total debit of \$3,329 and credits of \$3,372? A. Yes, sir.

Q. One of which you have subtracted from the

(Testimony of Julius Krakauer.)

other. And you [44] have the figures "TOT Gain Day, \$43." What does that represent?

A. That is gain for the day. Might I say that, you say that I did. I did not make those figures, understand.

Q. Whose figures are those that you refer to?

A. Those are Mr. Bob Hughes' figures.

Q. And did those refer to all of those figures that I have read to you at this time?

A. Yes, sir.

Q. Now, what is the next notation there?

A. Well, at the end of the day we had \$219.20, and we started with \$201.20, and incidentally, those are my figures, which shows a gain of \$18 for the day, purely a very simple matter of starting with so much money, ending with so much money, and that determines your gain or loss.

Q. All right. The next item is \$120. What is that?

A. Well, that is \$120, that is the accumulation from the previous period.

Q. Of profit? A. Yes, sir.

Q. For that first week? A. Yes, sir.

Q. Then at the bottom you have certain figures; by whom are they written?

A. They are written by myself, sir. [45]

Q. That is below the double line?

A. Yes, below the double line.

Q. There appears first "T \$8,554, plus \$3,372—\$11,926." What does that represent?

A. Well, the figure of \$8,554 was the accumu-

(Testimony of Julius Krakauer.)

lated take from the Monday to Friday. The close of business Friday. And if you will look above, you will see that I bring down the figure written by Mr. Hughes, of \$3,372, which makes \$11,826 as the accumulated take for the week. The accumulated take.

Q. Yes. In other words, that is the total amount of money bet by customers in the establishment during the six day period referred to here, is that correct? A. That's correct, sir.

Q. And you have the amount followed by \$306 plus three one six six five, and then six-twenty-three dollars, fifteen. What does that represent?

A. That is expense, and I figured \$306.50 is the accumulated expense from Monday to Friday at the close of business Friday, plus the \$316.65 expense for Saturday, which Mr. Hughes' figure above seems to indicate is correct, that makes a total expense for the week of \$623.15, sir.

Q. Then you have a letter "B" \$145, plus \$43.

A. That letter "B" indicates the book. In other words, that is what the book made or lost. That is purely "B".

Q. And then you have "G" \$158. [46]

A. Well, that is the gain for the week.

Q. Is that 158 or 188?

A. That is 188, sir.

Q. And that is the net profit as shown by these figures for the week? A. Yes.

Q. Then you have "RCR..."

A. Debits. That is "DR" and "CR". I don't

(Testimony of Julius Krakauer.)

write very well. That is "debit" and "credit". That is Mr. Wild's withdrawals or accretions, or what he paid in, your understand, when the book ran short.

Q. What he paid in or took out, is that right?

A. What he paid in, yes, sir.

Q. That is a debit, and what he took out is a credit, is that right? A. Yes, sir.

Q. And you have a figure \$170—

A. No, repeat that question, sir.

Q. I reversed it myself. What he took in is a debit and what he took out is a credit, is that right? A. That's right.

Q. And you end up with the figure of \$170; what does that figure represent?

A. That is what he withdrew during the week.

Q. Does any of that represent salary or is the salary included [47] in the expenses which you have identified, of \$623.15?

A. They are included in that, but I kept it separate for his information. That is the salary he drew up to Saturday night, \$55, and up to Friday night, I should say.

Q. Well, that is the next item here, is it not?

A. Yes, sir.

Q. I am referring to the item, a credit of \$170 which you said you drew. A. Yes, sir.

Q. Now, that does not include the salary?

A. No, sir, the salary is included in the expenses, but in this particular case I separated it.

(Testimony of Julius Krakauer.)

Q. Now, the next item is "SAL, \$55, plus \$30.85." Is that a salary item?

A. That is the salary item for the week, \$55 being to Friday, and \$30 on Saturday, which you will find indicated on the front of the card.

Q. Now, what are those last figures which appear there?

A. Those are the over and short that I kept from day to day, deductions for overages, charges for shorts.

Q. You were short, you say, on this day, \$48.50; is that the first figure?

A. Yes, that, as I said, was unusual—something must have happened. Previously we were over \$3.20, so the next shortage for the week was \$45.30.

Q. That is the figure that is set out here?

A. Yes, sir.

Q. Now, turning to the reverse side, which is headed "January 4," what—first, whose figures are those appearing on that?

A. Well, they are partially mine and partially Mr. Hughes'.

Q. And whose writing is that?

A. The writing in ink, well, the January 4, '40" is mine, the \$226.20 is mine. That is, the cash on hand.

Q. No, I am referring now to the words that appear here.

A. "PAP" and so on down?

Q. Yes.

A. That is my writing, sir.

Q. To what point?

A. To the word "Janitor."

(Testimony of Julius Krakauer.)

Q. In other words, the first four items are in your writing, is that correct? A. Yes, sir.

Q. And whose writings are those?

A. They are my figures.

Q. And that column. All right.

A. Down to that point.

Q. Now, what does the back of this card purport to represent? A. This side of the card?

Q. Yes.

A. That is the first four items of the fixed charges, that [49] I know are going to come up for that day, and I put them—I made the card up the night before and had it ready for the next day.

Q. And they were in fact paid out that day?

A. What is that?

Q. They were paid out on that day?

A. Yes, sir, they were.

Q. Will you relate what those were?

A. Well, the "PAP" refers to the papers for the day, three copies of papers, five cents apiece, which was split up and put on the bulletin board; salaries for \$52, including all the salary; the forms were \$2, which were bought every day at the corner.

Q. And "FRM" refers to racing forms?

A. Yes, sir, they were bought at the corner cigar store.

Q. What is that next item?

A. "Janitor" \$5.

Q. That was a daily amount you paid the janitor?

(Testimony of Julius Krakauer.)

A. Yes, sir, at that time; and later on, why, we had one, a man come in, paid him by the week, you will find.

Q. What is that next item, "EXT \$30"?

A. That is Mr. Hughes. I don't know. I wouldn't—

Q. Do you know of your own knowledge what that is?

A. I wouldn't care to answer that, because I am not sure of it. [50]

Mr. Belli: Is that "EXT" or "EMT"?

The Witness: "EXT." That is the way I read it.

Q. The next item is what?

A. Is the rent for the room, \$117.50.

Q. Now, was that a daily, weekly or monthly rental?

A. That was monthly. We paid that, usually Mr. Wild paid it himself, because of his very close relation to Mr. Harper, the manager of the building.

Q. Yes.

A. And then he would draw it out as the business could afford it, maybe the same day or the next day, or whatever, when the opportunity presented itself.

Q. This was a monthly charge, is that correct, then?

A. Yes, that was, sir.

Q. And it so happened that on that occasion it was paid on the day of this card, January 4?

A. Yes, sir.

Q. If it had been paid on an earlier date, it

(Testimony of Julius Krakauer.)

would have been accumulated in the total expenses?

A. It would have been accumulated in the expenses. It just happened to go on that day.

Q. What is the next item, "NUT, \$105"?

A. "NUT, \$105." That is in Mr. Hughes' writing, but he has made an error in describing it because—

Q. Do you know what that \$105 was? [51]

A. Frankly, sir, it is a payoff.

Q. To whom? A. I don't know.

Q. Was that an item which you paid each month? A. Yes, sir.

Q. And in that same amount?

A. Yes, sir.

Q. And in keeping the books, did you keep a monthly record of the payment of that amount, \$105?

A. It was included—if it was paid in any other day, but this, it would have been included in the expenses, that is all—go right into the expenses. It just happened to fall on this day, that is all.

Q. You did, once a month, on some date; would this amount of \$105 expense for that purpose be shown? A. Yes, sir, once a month.

Q. And it so happened that in this particular month it fell on this date, is that correct?

A. Or it may have been that Mr. Wild paid it out previously, as he did the rent, then called on the book for it, when the book could afford it, or it happened to occur to him, but it was paid every

(Testimony of Julius Krakauer.)

month, either charged on the date or if Mr. Wild paid it, whenever he picked it up later on.

Q. Yes. But on this occasion, either it was paid on this day or picked up by Mr. Wild on that day, is that correct? [52] A. That's correct, sir.

Q. And was that payment made monthly during the whole period of time you were there—that is—Strike that. Was that made during the period here in question, 1941, '42 and up until September of '43 when you left the employment of Mr. Wild?

A. I am very, quite sure in saying it was paid every month. Of course—

Q. Did you yourself ever hand that amount to anyone?

A. Only on one occasion when Mr. Wild and Mr. Hughes were absent for some reason, personal or otherwise, and I was given an envelope—

Mr. Belli: Let me interrupt here, your Honor. I know nothing of this part, and if there is anything with reference to any "pay-off" or gambling or anything like that, I am sure that the proper authorities would be qualified to handle that. I don't think that names should be mentioned here unless your Honor feels that it is important. I know nothing about it, I tell you that sincerely and frankly, but as far as this goes, I understand that this is an income tax case. The source of the business, it is true, is from gambling. Now here we have an item, and apparently if Uncle Sam is entering a partnership here with Mr. Wild, this is an item that is deductible expense. I think that is far

(Testimony of Julius Krakauer.)

enough to go on it. There may be innocent people involved here or if not innocent, let them be dealt with properly by the proper authorities. [53]

Mr. Campbell: May I state, your Honor, that under the law such an expense is not deductible for income tax purposes. It is necessary that we establish the nature of these in determining what allowable expenses there are in connection with this business, to ascertain the true income of the business. If these payments were made, as your Honor, I know, is familiar with the law, they are not for reasons of public policy, allowable. We are not attempting to try here, of course, any matter which should or could be tried by the local authorities; and it is not our purpose in introducing this evidence to in any way usurp or stab into the authority of those agencies which are intrusted by law for that purpose, but we think we are entitled and should show this in arriving at the actual net income of this defendant, these not being allowable, but through the testimony having been accumulated as an expense of business.

The Court: You now refer to the item of \$105?

Mr. Campbell: The item of \$105, yes, sir.

The Court: That was the item referred to as paid monthly by Mr. Wild?

The Witness: Yes, sir.

The Court: What was the last question?

Mr. Belli: That is the question, your Honor, that is objected to; unless your Honor feels we should go into that, I think the character of the

(Testimony of Julius Krakauer.)

fund which has been characterized [55] here as “pay off” should be a legal matter from there on in, as to whether that is an allowable deduction.

The Court: Counsel, let us understand this phase of the case. With respect to this item of \$105 referred to by the witness as a so-called “pay-off” colloquially, do you contend, counsel for the defendant, that those items or the accumulation thereof are deductible, or otherwise?

Mr. Belli: I would think that would be deductible. It is a rather strange case. The only way that he could run this business and make his income was by—

The Court: Well, your position having been taken on that, that it is deductible, the Government claims it is not deductible. Since you have adopted that position, all the surrounding facts and circumstances considered, it is clearly admissible in order to establish the character of the fund. The objection is overruled. You may answer the question.

Mr. Campbell: Will you read the question, Mr. Reporter?

(Previous question read.)

A. On a certain occasion, the date of which I couldn't, naturally at this late date, name, Mr. Wild and Mr. Hughes, either one of whom paid—or at least I was told they paid it—I was handed an envelope to give to a person whom the elevator boy would tell me would call for it.

Q. Did you know the person?

A. I did not, sir. I handed him the envelope.

(Testimony of Julius Krakauer.)

I don't even [55] know what was in it, sir. I especially declined to have anything to do with that phase of the business.

Q. Well, you were informed of the nature of this \$105 monthly payment?

A. Yes, sir, I knew, I knew. I well knew what it was for. I wouldn't be telling the truth if I didn't say that.

Q. And did he inform you as to the nature of the payment?

A. Well, whether he directly informed me or not, I wouldn't want to say. But I well knew the nature of this \$105 item, sure. I think—I want to be honest, I don't want to pin myself down that he came to me and said, "This is what it is."

Q. Now, what is the next item that appears there?

A. "Elevator." We gave the elevator boy an allowance of \$5 a month for such services as he rendered the establishment—well, in the matter I just spoke of, bringing this man downstairs and also other services of like character.

Q. Now, I am going to refer you back to the entire group of cards, Government's Exhibit 7. of which the card you have just described was a part. Now, are the entries on the remaining cards in that group similar to the ones which you have described in particular?

A. Well, without going—I will go through them all if you desire me to, sir, but I believe you will find that the entries are about the same, because I

(Testimony of Julius Krakauer.)

made up this card after sort of a trial and error period, and got it down to as few items as I [56] could, which would properly reflect the business and truthfully so; and I don't think there is any change in them.

Q. Now, as far as you know, those cards contained a record of the receipts of the business and of all expenses in connection with that business, is that correct?

A. Yes, sir. I should like to say also, Mr. Campbell, that every now and then one of the top portions of these cards bears my handwriting. Very few, however; just why that is true, maybe Mr. Hughes wasn't there for some reason or other when the business was closed for the day, but they are only a few in number, probably two or three in this whole group. I just want to say that, because I said before that all of the top portions of the cards were in the handwriting of Mr. Hughes, whose records are used in bringing down for the accumulated weekly information.

Q. Well, now, as I understand, either you or Mr. Hughes would write the daily information for all of the accumulated information at the bottom of the card, that was all accumulated by you?

A. Yes, sir.

Q. And that was a part of your employment?

A. Yes, sir.

Q. And now there is just one other thing with regard to that first card. On the reverse side appears some figures, \$226.20, a subtraction of \$50,

(Testimony of Julius Krakauer.)

\$176.20, \$43, and \$219.20. Will you [57] state what those figures represent?

A. Well, the \$50—

Q. What is the \$226.20?

A. The \$226 was what we started with.

Q. That is the amount of money on hand at the beginning of the day? A. Yes, sir.

Q. And what is the \$50?

A. The \$50 was, apparently Mr. Wild was in need of some immediate funds—

Q. Was that a withdrawal by him?

A. Yes, sir, that always appeared in that form.

Q. And that left \$176.20, is that right?

A. Yes, sir.

Q. Now, what is the \$43?

A. The \$43, he apparently added that.

Q. Well, is that the profit for the day as reflected from the front of the card?

A. No, sir.

Q. Is that the total gain for the day?

A. May I correct that answer, sir?

Q. Yes.

A. This isn't one of the cards that shows the situation that I just described. The \$50 was the \$50 paid to Mr. Wild for profits of that day, which left \$176.50. [58]

Q. And what is the \$43?

A. Mr. Wild probably handed that back, you understand, just in order to bring the nut up to approximately \$219.20, approximating what it started with.

(Testimony of Julius Krakauer.)

Q. That would be the amount you would have to start with on the following Monday, isn't that correct, sir?

A. Yes, sir, that would; that gain for the day was readded by him.

Q. Now, if I may take these, please. I am going to show you Government's Exhibits 8 and 9 and ask you if your description of the entries here on these cards would be the same as you have given with reference to Government's Exhibit 7, the cards for the year 1941.

A. Well, without going all through them, sir, there was no change in the form which I used, the symbols used, the manner of accumulating them, and from where I drew my figures for daily accumulation and at the end of the week. During the entire period which is covered by this case, as I understand it, that is the case. As I say, I could look through them all, but I am quite sure there is no change, sir. There might be a few cards, the upper portion of which I wrote, as I told you a moment ago, but they are very few in number.

Q. Now, all of those cards, together with the cards in Government's Exhibit 7—that is, those relating to 1941—do they all accurately and truthfully, to the best of the information [59] which you had at the time the entries were made, represent the business that was done there at 1182 Market Street?

A. Yes, sir, especially because—

Mr. Belli: Well, just a moment. That would be a conclusion of this witness, a conclusion over

(Testimony of Julius Krakauer.)

all of his testimony. The facts speak for themselves—or the lack of facts speak for themselves, your Honor. I think he is testifying.

The Court: Objection is overruled.

Mr. Campbell: Q. What is your answer?

A. They do, with the qualification, however, that I drew my daily information for accumulation from the figures made up by Mr. Hughes.

Q. Yes.

A. But I satisfied myself each day that the amount of cash was there that these figures showed, because I was responsible for that cash and in fact being responsible for that cash, was why I insisted that some sort of a record be kept, because I have handled a lot of cash in my life and have since I was employed by Mr. Wild, and I always insist that I be protected to that extent, which was the reason for my making up this character of record.

Q. I am going to call your attention to another card in Government's Exhibit 7, the card with reference to the year 1941, and call your attention to the back of this card, where appears a letter "X"—105, which was the type of entry which we [60] did not see on the card you were originally shown. Do you know what that is?

A. Well, that is the same character of item that I spoke of, pay-off, you understand.

Q. That was for protection?

A. Yes, sir; in other words, we made the "X" because we didn't, of course, naturally, wouldn't

(Testimony of Julius Krakauer.)

want to put "Pay-off" or anything of that kind down.

Q. But that is what the "X" represents when it appears?

A. Whenever it happens to appear on the daily expense for Saturday, you will find it in that form, sir; that is the reason I answered a while ago that Mr. Hughes had made an error when he put down the word "nut"—that was just merely a lapse.

Q. "X" was the usual code used?

A. Yes, sir.

Q. And where the pay-off was on a Saturday, as I understand you, it was accumulated in the total which is accumulated in those cards as expense?

A. Yes, sir.

Q. Now, I notice in examining these cards that occasionally two "X's" appear with reference to expenses. Can you state what that consisted of?

A. That could be one of several things, but I believe I am safe in saying that in the majority of those cases that [61] double "X" was used for something that we didn't want to write out, or spell out, as the saying goes. But they would usually refer to expenses in connection with the bonds and attorneys' charges after we were picked up, or raided.

Q. How often did that occur?

A. Of course, to be absolutely definite, after all these years, that is something I wouldn't undertake.

(Testimony of Julius Krakauer.)

Q. But that was a symbol used for that purpose?

A. Or some symbol of like character, that we didn't want to spell out, as I said a moment ago.

Q. How often did that occur, to the best of your recollection, in the period here in question, 1941, '42 and '43?

A. Well, there were two forms of raids.

Q. Well, first how much, or, rather how often were you raided? A. I wouldn't want to say.

Q. What is your best recollection, Mr. Krakauer?

A. Oh, probably during that period that is covered there, maybe eight or ten times. That is a guess.

Q. You say there were two kinds of raids. To what did you refer?

A. Well, there was the kind that we knew about in advance. That was for the purpose of putting the particular establishment on the blotter, for such inspection as might be necessary, or periodically made.

Q. Now, was that in connection with the \$105 you said you paid [62] monthly?

A. I don't know, sir.

Q. I see, very well.

A. The same way, I will tell you, I know nothing about that.

Q. How often did those occur, that you knew about in advance?

A. Eight or ten times in that period, but there

(Testimony of Julius Krakauer.)

were some of those eight or ten times in that period that were what we call "beef" raids, where somebody complained about, oh, not having been paid off as they should have been, having been dishonestly treated or cheated, or something like that. And, of course, then it became a headquarters raid, and there wasn't any question about it then.

Q. You had received no warning in those cases?

A. No, sir.

Q. All right. Now, with reference to these cards—strike that. With reference to the operation of the business there, was there conducted what is sometimes known as "laying off" bets? Just answer that "Yes" or "No," if you will.

A. No.

Mr. Belli: "Laying off" of what?

Mr. Campbell: Laying off bets.

Mr. Campbell: Q. Will you explain what is meant by "laying off bets" in the business of horse betting?

A. Well, when a bookie finds himself overloaded on a certain horse, or his position is bad as compared with the bets on [63] other horses numbered in that race, he lays off a portion to protect himself, and when I said "No" a while ago, that is not a hundred percent correct, but the "lay-off" was very, very limited.

Q. Well, now, when they what you call "lay off" to protect themselves, what he does, is it not, is place covering bets with other bookmakers—is that correct? A. Yes, sir.

(Testimony of Julius Krakauer.)

Q. And that is usually accomplished in either one of two ways, is it not, by having some person, some other bookmaker, knowingly accept the risk on the bet, or else by having runners make bets in someone else's establishment? Is that true?

A. That is true; it is done both ways.

Q. And was it done both ways in this establishment?

A. Yes, sir; some bookies do it largely, some do it limitedly.

Q. Now, may I ask you this, were the amounts involved in any lay-offs that were used in this establishment reflected in the bets you have reported on your weekly cards and the pay-offs to the customers also reflected there?

A. Yes, sir, whenever a bet was sent out as a lay-off by a runner, usually across the street, somewhere—there was a bookie on each street—why, it was noted, it became a part of the day's business.

Q. And it is reflected on the cards you have here? A. Yes, sir. [64]

Q. So that any profits or losses by reason of that are reflected in your totals on these cards, is that correct?

A. I think that is the situation.

Q. Now, something was said earlier concerning the subject of "sleepers." Will you state what a sleeper bet is?

A. Well, a sleeper is a bet that there is nothing dishonest about, irrespective of what anybody tells you.

(Testimony of Julius Krakauer.)

Q. No, don't characterize it, just what is it?

A. It is a bet that nobody calls for—when it is laid aside in the evening, after the day's business, and the bettor doesn't call for it, either the next day or ever.

Q. Can you state why that occurs—or let's put it this way: It is a fact, is it not, that sometimes a bettor intends to bet on a particular horse and gives the wrong number to the ticket taker, is that correct?

A. That's correct, sir.

Q. And while that horse comes in, he doesn't know he has bet on the winner, isn't that correct?

A. Yes, sir, so he has not been in any way misused.

Q. Yes. Well, now, during the period here in question, 1941, 1942, and 1943, did there monthly occur sleepers—that is to say, money uncalled for by bettors?

A. Yes, there were.

Q. And what was done, what was the practice in this particular establishment with regard to that money? How long would [65] it be held, and then what disposition would be made of it?

A. Oh, a limited time, and then turned over to Mr. Wild.

Q. How long would it be held on the average?

A. A couple of weeks, perhaps. I did have a little record of that at one time, but I don't remember it now.

Q. You don't have that record now?

A. No, sir.

Q. Now, can you state the highest amount of

(Testimony of Julius Krakauer.)

sleepers which you now recall which were turned over to Mr. Wild at a particular month?

A. Oh, it would run as high as 300, which I think was tops.

Q. And what was the least it ever ran that you recall?

A. Oh, maybe \$50, \$60, something like that.

Q. Can you state what the average was over the period of time, to the best of your recollection?

A. It is pretty hard without that record, but I would say \$125, \$150. That might not be correct, though.

Q. That would be your best estimate?

A. Yes.

Q. Would that be per month?

A. Yes, sir.

Q. Now, was any of that money which was received by way of sleepers reflected in these cards, Government's Exhibits 7, 8, and 9?

A. It couldn't have been, because they were taken out as pay-outs [66] at night, so they were reflected in the pay-outs. It couldn't have been.

Q. I see. Well, any money that Mr. Wild received by way of these sleepers which were not called for is not accounted for as a profit of the establishment as set forth in these cards which you have identified here, is that right, sir?

A. That's correct.

Q. Now, you stated, I believe, that you left Mr. Wild's employment sometime in September?

A. Yes, sir.

(Testimony of Julius Krakauer.)

Q. 1943? A. That's correct.

Q. I believe you testified in answer to a previous question—

A. It was a Saturday night, and according to those cards, it must have been the 25th. I haven't a calendar here, so of course I can't certify to that.

Q. Was that your best recollection after examining these cards, that it would be Saturday night, the 25th of September, which is represented by the last card here, is that correct?

A. Yes, sir, I think a calendar would probably show that to be correct.

Q. Now, from then through the balance of the year, you were no longer in Mr. Wild's employ?

A. No, sir. [67]

Q. Were you in his place of business from time to time until about the end of the year?

A. No, sir, I never went back.

Q. You never went back? A. No sir.

Q. All right. Now, in connection with these cards and the keeping of these cards—strike that. At the time that you left Mr. Wild's employment, what, if anything, did you do with these cards?

A. Repeat that, please, sir?

Mr. Campbell: Would you please read the question to him, Mr. Reporter?

(The reporter read previous question.)

A. I kept them.

Q. You took them with you? A. Yes, sir.

(Testimony of Julius Krakauer.)

Q. Did you have a discussion with anyone there at the time that you took these cards?

A. I did, sir.

Q. With whom?

A. With Clarence Collard, who was appointed to—

Mr. Belli: Now, just a moment, anything that was said to anyone else is not binding upon Mr. Wild, himself.

Mr. Campbell: He hasn't started to relate a conversation yet. [68]

Q. With who? A. Clarence Collard.

Q. Who was Clarence Collard?

A. He was the cashier.

Q. Employed by Mr. Wild? A. Yes, sir.

Q. Was he related to Mr. Wild?

A. Not that I know of. I am quite sure not.

Q. I see. May I ask you if at that time you had any conversation relative to taking these cards?

A. I did, sir.

Q. All right. Now, during the period of time that you were employed there, did you have any discussions with Mr. Wild relative to the payment of income taxes to the United States? Now, answer that "Yes" or "No," if you will. A. Yes.

Q. And did you have such conversations on one or more than one occasion?

A. Several, perhaps three would cover it. It might have been an extra one beyond that.

Q. You, at this time, definitely recall three separate conversations? A. Yes, sir.

(Testimony of Julius Krakauer.)

Q. When was the first of such conversations, to the best of your recollection? [69]

A. Early in '43.

Q. Can you place the date more accurately than that, or is that your best recollection?

A. That is my best recollection. I don't want to place dates that I can't substantiate.

Q. I understand.

A. It was early in '43.

Q. Can you place it with relation to any other event?

A. I can, sir.

Q. And with relation to what event?

A. Early one morning of the day—

Q. No, just place the event, not what occurred.

A. What was that?

Q. I say, there was some event?

A. Yes, sir.

Q. What was the event?

A. Conversation I had with Mr. Hughes.

Q. Well, now, let's get to the conversation with Mr. Wild. Who was present when you had your conversation with Mr. Wild?

A. No one.

Q. Just Mr. Wild and yourself?

A. Except on another occasion, Mr. Bob Callahan was standing there; whether he heard that, what was said, I don't know. But that wasn't the first one. [70]

Q. No, I am getting to the first one now. We will come to the others later.

A. No one.

Q. And where was the conversation?

A. At my station, where I wrote tickets.

(Testimony of Julius Krakauer.)

Q. That is in the business establishment at 1182 Market Street? A. Yes, sir.

Q. What was said?

A. Am I permitted to tell you what led up to it?

Mr. Belli: Well, I will stipulate you may say anything you want.

Mr. Campbell: Q. All right, go ahead—counsel has agreed.

A. Early one morning before the establishment was open for business, that is, before the first races were, near post time, someone appeared in the establishment, and the first thing I knew—I didn't know the man—he was over talking to Mr. Hughes very earnestly near the radio. That is, we had a radio, a cabinet radio which had nothing to do with the loudspeaker we referred to previously. And after he left, Mr. Hughes came and told me that this man was from the Internal Revenue Office, and he was afraid the Jules, as we referred to him there, or "Pop," sometimes—

Mr. Belli: I am sorry, I didn't hear that. Would you read it, Mr. Reporter, where he dropped his voice? [71]

(The reporter read last part of previous answer.)

Mr. Campbell: Q. Proceed, Mr. Krakauer, and keep your voice up.

A. Yes, sir. . . . was in some trouble on his, as I recall it, '41 Return.

Q. Now, as a result of Mr. Hughes telling you that, did you then have a conversation with Mr. Wild?

(Testimony of Julius Krakauer.)

A. Yes; well, I told Mr. Hughes that I thought he would, and he said that he had been—

Q. Well, let's not go into the conversation.

A. All right.

Q. What you thought or Mr. Hughes thought. Let's go directly to the conversation.

A. All right, Mr. Wild came to me after he came in; he wasn't there when this conversation took place between these two men, and when he came in, evidently Mr. Hughes must have reported the situation to him, and he came over to me and inquired what I thought about it. And I told him that it would seem to me that he would have some explaining to do, and he got quite angry.

Q. Was that all that occurred at that time?

A. Yes, sir.

Mr. Campbell: Shall I go to the next conversation, your Honor?

The Court: I think perhaps we had better take a recess, if this is a proper time in your narrative statement. [72]

Mr. Campbell: Yes, sir.

The Court: Ladies and gentlemen of the jury, the same admonition to you. We will resume court at two o'clock this afternoon for further trial of this case, and I admonish you not to discuss the case with any person or not to form or express any opinion thereon until it is finally submitted to you.

Afternoon Session, Wednesday, August 11, 1948,
2:00 p.m.

The Court: The jurors are present now, gentlemen. That stipulation may be continued in effect and unless otherwise noted, so I will not have to repeat the stipulation.

Mr. Belli: So stipulated.

The Court: Mr. McMillan?

Mr. McMillan: Your Honor, just a little while ago I learned with very much regret that a gentleman very much beloved by all of us, Francis A. Garrecht, Senior United States Circuit Judge for the Ninth Circuit, passed away last night. I don't believe I ever knew a more kindly man than he. His life was expressive of graciousness, good will, and courtesy. He has been a firm friend of mine for a long while. I remember a short time ago he remarked to me that from experience, there is nothing more advantageous to a man than mildness and a forgiving disposition. That was one of his main ideals.

I know we will all miss him, and I move that when this court adjourns today, it do so out of respect to the memory of Francis A. Garrecht.

The Court: Thank you, Mr. McMillan.

Mr. Belli: May I likewise join in that motion?

The Court: You may, Mr. Belli.

I certainly could not add anything to your remarks, Mr. McMillan. I think that you have covered in a very brief few [74] words the character and outstanding virtues of a great jurist and an outstanding public servant.

I know that in my brief tenure of office, particularly I have been afforded a great inspiration in the conduct and deportment of Judge Francis Garrecht.

It is with great regret that we will adjourn this Court today out of respect to his memory.

You may proceed, counsel.

JULIUS KRAKAUER

recalled; previously sworn.

Direct Examination—(Resumed)

Mr. Campbell: Q. Mr. Krakauer. at the time of the recess you had related a conversation which you had had early in 1943 with Mr. Wild relative to the income taxes. You previously stated that you had had at least three conversations which you recalled. Have you stated now, all that you recall of the first conversation?

A. As I say, I told him that he would have, in my opinion, some explaining to do, and he became very angry.

Q. What did he say?

A. He said, well, I wouldn't know all about his business; and that ended the conversation as far as we were concerned.

Q. And when was the next conversation?

A. I should say maybe in two or three weeks. He came over to [75] my station and Mr. Callehan, who was over on the typewriter.

Q. This was at the business establishment?

(Testimony of Julius Krakauer.)

A. This was at the business establishment.

Q. Can you place this conversation with reference to the 1942 returns, as to the time when they should have been filed?

A. No, this was with reference to the 1941 returns.

Q. Yes, I know, but can you place the time with reference to March of 1943?

A. No, it was much before that—very much before that.

Q. Very much before that? A. Yes.

Q. But it was after the first of the year?

A. Yes, it was after the first of the year in 1943.

Q. Would you relate what was stated on that occasion?

A. Mr. Wild came to my station and said Mr. Callahan wanted some figures from me and would I please give them to him. I left my station and undoubtedly Mr. Collard took over for me, and I walked over with Mr. Callahan. Mr. Callahan was standing a little away from me and whether he heard what Mr. Wild said, I don't know.

Q. What did Mr. Wild say?

A. To give him the figures he desired.

Q. Who was Mr. Callahan?

A. As I understood it, he was the man who made the return in question about which our conversation took place before. [76] I never have received a return before.

(Testimony of Julius Krakauer.)

Q. You had nothing to do with the preparation of the **return**?

A. No, I don't even know where he made it.

Q. Did Mr. Wild tell you what figures to supply at that time?

A. No, just that Mr. Callahan wanted some figures and would I please give them to him, which I was willing at that time to do.

Q. When was the third conversation you had?

A. The third conversation was evidently as the result of the figures I gave Mr. Callahan.

Q. When was the conversation?

A. Maybe a month or two after the one I spoke of in which he requested—

Q. Who was present on that occasion?

A. No one except Mr. Callahan and Mr. Wild came in very much elated—he came in the regular entrance in the back or front of the room, whichever way you want to look at it.

Q. Would you relate the conversation?

A. He came by and sort of slapped me on the back and then he said, "I got that all settled." He said, "You see, I know how to settle things of that kind."

Q. Did he say what he was referring to?

A. Oh yes, he was referring to the matter of the 1941 return, about which there had been some question.

Q. You say you had been requested to prepare some figures and [77] give them to Mr. Callahan?

A. Yes, sir.

(Testimony of Julius Krakauer.)

Q. Did you prepare some figures for Mr. Callahan?

A. I didn't prepare them; I went over to where he was working and took twelve cards—at least they turned out to be twelve, but there may have been more in the pile that he had dictated and he gave me certain figures, I should put down on the 12 cards in my own handwriting.

Q. At the time you started, were those blank cards? A. Those were twelve blank cards.

Q. Mr. Callahan dictated what was to be placed on those 12 blank cards?

A. Yes, and the two figures were to represent, as I recall it, total take for every month, and expenses.

Q. Did you put down the figures which Mr. Callahan dictated?

A. I put down the figures which Mr. Callahan requested me to.

Q. Did those figures bear any relation or were they reflected in the cards that you identified?

A. Very decidedly not.

Mr. Belli: May we have the figures themselves?

The Court: What is the comparative analysis that is being made? There is a discordant note in my mind.

Mr. Campbell: The witness testified that he was instructed to furnish certain figures to Mr. Callahan, and I am simply getting a description of the figures. He has now stated that [78] Mr. Callahan dictated certain figures that he was to place on

(Testimony of Julius Krakauer.)

twelve cards. I asked that he remit whether those figures had any relation or were a reflection of the figures related on the Government Exhibits and which he has identified as the true records.

The Court: The objection is overruled.

Q. You have a recollection, though, do you?

A. I had a good recollection very much. I worked with figures all my life and I knew they were not correct.

Q. When the figures were presented by Mr. Callahan, you made a mental comparison, did you?

A. I didn't take the cards and compare them.

Q. Did you have a definite concept in your mind? A. Yes.

Q. How long could you retain that concept?

A. Pretty well for some time now. Having worked with figures all my life. Maybe not now, but I had a pretty good idea then of what the figures were from month to month.

The Court: You may examine the witness if you so desire, counsel, on this point.

Mr. Belli: I can either do that, or let it go until the end of the cross-examination.

The Court: I would not want a comparison made, counsel.

Mr. Campbell: I don't intend to make a comparison. This was a preliminary question leading to something else. [79]

The Court: All right, we will overrule the objection.

(Testimony of Julius Krakauer.)

Mr. Campbell: Q. You would say that they did not— A. Decidedly not.

Mr. Belli: May we have this subject to a motion described by the court.

The Court: Yes, the motion is deserved, and my ruling is deserved.

Mr. Belli: Thank you.

Mr. Campbell: Q. What were some of those twelve cards when you last saw them?

A. At Mr. Callahan's station while he worked on the typewriter, I went back to work.

Q. Have you ever seen them since that time?

A. No, I have not.

Q. Do you know where they are at this time?

A. I have no knowledge of that.

Q. You have no knowledge?

A. I have no knowledge, no.

Q. You say that subsequent to your making up of those cards Mr. Callahan and Mr. Wild came into the office and you stated that he was elated. Is that correct? A. Yes.

Q. What did Mr. Wild say to you on that occasion?

A. That he had the matter settled. Whether he stated that it was a tax matter, I wouldn't want to say. It is too long ago. [80] But the implication and impression naturally was—

Mr. Belli: I move that go out.

The Court: Whatever implications there may be is a matter for the court and the jury. Just state

(Testimony of Julius Krakauer.)

the facts as you recall them without any editorial comments.

Witness: All right, sir.

Mr. Campbell: Q. Did he say anything else on that occasion?

A. Nothing beyond what I stated in answer to your previous question that he knew how to fix up such matters, or words to that effect.

Q. And now, coming back again, Mr. Krakauer, to these three sets of cards, U. S. Exhibits 7, 8, and 9, which you have identified as the records kept for the years 1941, 1942, and 1943, as being the Saturday cards with the weekly accumulation, after these cards were made up—first, let me ask you this: Were these the only set of cards, or was there more than one set of cards made?

A. There was more than one set of the day to day cards made. But there was a duplicate of the Saturday or weekly statements made up at the request of Mr. Wild and I gave him one every week.

Q. That would be a duplicate of the cards here?

A. A duplicate of each of the weekly cards, yes.

Q. Does that include the entries for Saturday itself? [81]

A. The exact duplicate of that, yes.

Q. Is this the original card with the original entries? A. Yes, sir.

Q. So that it was a copy of this you say that was made up for Mr. Wild.

(Testimony of Julius Krakauer.)

A. It had to be, sir.

Q. Not what it had to be, what it was?

A. Yes.

Q. And you say that those were given to Mr. Wild weekly?

A. Yes, sir.

Q. Now, on or about the time you left Mr. Wild's employ, or at any time during your employment there, did you have any conversation with Mr. Wild relative to the disposition of these cards? Answer that yes or no if you will, please.

A. Yes.

Q. When was that?

A. That was after—quite a little while—and when I say “quite a little while”, I mean perhaps a month or more after the settlement that was mentioned in my reply to the question when he and Callahan came in together, he told me to destroy all the cards I had. I had some outside of these.

Q. When you say “outside of these”, to what are you referring?

A. In other words, they were referring to 1939, and 1940, and I destroyed them. [82]

Q. They were referring to 1939 and 1940?

A. Yes, sir.

Q. What did he tell you? What cards did he tell you to destroy?

A. He told me to destroy all the cards.

Q. But you retained these?

A. Yes, sir.

Q. As I understand your testimony, when you left the employment of Mr. Wild, you took these cards with you?

A. Yes, sir.

(Testimony of Julius Krakauer.)

Q. Did you have any conversation at the time you terminated your employment with Mr. Wild as to the termination of employment, and particularly with reference to these cards? Answer yes or no. A. Yes.

Q. Do you recall the date that that was with reference to the date that you left? You say that you left the 25th of September?

A. It was on the 25th of September.

Q. 1943? A. Yes.

Q. Who was present at that time?

A. Mr. Collard and an old friend of both Mr. Wild and myself, whose name I cannot at the moment recall, but I can identify him as a Spanish War Veteran from my home town in Texas who [83] had arthritis. Mr. Wild told Mr. Collard to check me out.

Q. Just state what was said at the time.

A. Mr. Wild told Collard to check me out and Collard remained there to do so. Wild went out of the door leading to the elevator.

Q. Now, we cannot have the conversation after Mr. Wild left. Is that all?

A. No, he came back, however.

Q. All right, after Mr. Wild came back, what was the conversation?

A. He said, "Remember, don't you endeavor to do me harm in this tax matter because you are into this as deep as I am."

Q. Was it as a result of that conversation that you retained these cards?

(Testimony of Julius Krakauer.)

A. And also the fact that I had regretted and did not know what my legal and criminal culpability was in giving those cards to Mr. Callahan, and I felt I was justified in retaining them to protect myself in case of necessity.

Q. When you say or refer to the cards which you gave to Mr. Callahan, you are referring to the cards which you previously had written up at his dictation?

A. I am not a tax expert or a lawyer.

Q. But when you say "twelve cards" you are referring to the twelve cards you gave to Mr. Callahan?

A. Yes, sir, I refer to the twelve cards that I gave to [84] Mr. Callahan.

Mr. Campbell: You may cross-examine.

Cross Examination

Mr. Belli: What did you call it around the book-ing establishment at that time—tocs?

A. Yes, sir.

Q. That was more or less a term of endearment or affection?

A. Yes, adopted, before I came there, apparently, Mr. Belli.

Q. You were held in esteem and quite a bit of affection over a period of years?

A. Yes, sufficiently, because I gave him a very important job when I was head of the War Community in El Paso, Texas.

Q. Where did you first know him?

(Testimony of Julius Krakauer.)

A. When I had a business acquaintance with him when he was in El Paso, Texas.

Q. How long ago would you say?

A. I can't guage it by my age—about 30 years.

Q. So there would be no question about his honesty, you would characterize him as honest in his dealings with the public and with everyone else as far as you know?

A. Exceptionally honorable.

Q. You add "honorable" to my description "honest".

A. There isn't much distinction there.

Q. By the way, on these sleepers, there are a couple of points [85] I want to correct you on. May I refresh your memory with reference to what they call sleepers. I think you said that there was nothing dishonest in the way they were handled, that people would not come in to pick up their bets they had won, and that money would then go to Julius? A. Yes.

Q. Don't you recall he divided that amongst the help there?

A. Mr. Belli, that was supposed to be the habit, but, except for handouts, now and then, it was not definitely divided fifty-fifty.

Mr. Campbell: Will you keep your hand down, Mr. Krakauer, please?

A. Thank you, Tom, I have a bad habit of that. I'm glad you called my attention to it.

Mr. Belli: Q. But there was some division of the sleepers?

(Testimony of Julius Krakauer.)

A. Besides the bonus on the profits, he would give a handout, but not on a fifty-fifty basis.

Q. Weren't you there on a lot of occasions when people would give a number, and say, 585, and the bet would be on 585, and they would come in and swear they had said 685, and that 685 had won the race, and Julius would not argue, but would pay?

A. Yes, he was very liberal that way, also, sir.

Q. As a matter of fact, didn't he have a rule that the customer [86] was right three times before he would forbid him from coming back and betting?

A. That's correct. In fact I might say that his reputation was very good in that respect.

Q. Julius was "in hock" quite a bit, to use the vernacular of the trade? Didn't he have to go down and pawn quite frequently?

Mr. Campbell: Just a minute, if he knows—

The Witness: I do know, sir.

Mr. Belli. Q. It was common knowledge, wasn't it?

A. Yes, it was common knowledge, because I to Maxferd's on two or three occasions. I might say, sir, I don't know whether it is something you don't want, but I did that—

Q. I will try and stop you if I don't want it. Well, in any event, if Julius had his ups and downs during the time you were there financially as reflected at least in the times that he went to Maxferd's to borrow? A. Yes.

(Testimony of Julius Krakauer.)

Q. Do you know how much he had to go and borrow there at different times?

Mr. Campbell: I object to the question in that form.

The Court: How much he had to borrow?

Mr. Campbell: It seems a fact not in evidence.

The Court: You might reframe the question.

Mr. Belli: Q. How much did he borrow then at different [87 times, do you know?

A. I picked up a ring one time for him. I think I took 2,000, but I don't want to be too certain about that because it was too long ago. I think it was \$2,000. It might have been \$1,500.

Q. As a matter of fact, if you will pardon me for going into this, he borrowed \$3,000 from you, Mr. Krakauer, on one occasion?

A. Well, Mr. Wild—let me see, before I went to work for him, he was indebted to me, and during the entire years I worked for him, I don't think there was one day hardly, except the seven months before I severed my relations with him, when I felt that our relations were deteriorating, that he did not owe me—sometimes on the scratch of the pen and sometimes in the open.

Q. Was he a pretty sloppy man about paying it back, or how?

A. Sometimes, if things were going well, he would pay me back and then borrow it right back and pay me back and so on and so forth.

Q. This was over a period of how many years?

A. During the entire time I was there except

(Testimony of Julius Krakauer.)

the seven months I speak of where I thought I'd better not let the situation continue because it might become unpleasant.

Q. At least, it covered the period of time in which the indictment covers? [88]

A. Yes, except the seven months before—take September 25 and subtract about seven months and you will have the right period.

Q. And at least during those periods, subtracting the six and seven months period, you say outside of that period in 1941, 1942, and 1943, Julius was borrowing from you off and on during all that time?

A. Yes, sir, money I had saved, and I was very glad to give him it. I make no denial of this. He and I were quite friendly.

Q. If you will pardon me again on a personal matter, when you came out here you only had about \$900, Mr. Krakauer—\$500 or \$900?

A. Less than that.

Q. Less than that?

A. Yes, less than that.

Q. How much? Can you state how much less?

Mr. Campbell: Objection to as immaterial.

The Court: Overruled.

Mr. Belli: I assure your Honor I will connect it up in all sincerity.

Q. About how much?

A. \$721, to be exact.

Q. And that was when?

A. 1932. [89]

Q. When did you loan him the \$3,000?

A. Well, Mr. Belli, the first money I loaned

(Testimony of Julius Krakauer.)

was without his knowledge, really. He was in Canada running his horses and Mr. Hughes and a boy by the name of Al, who was the doorkeeper, a nephew of his by the name of Lawrence, were running the book and it was not doing very well.

Q. This was what year?

A. About, let us say, 1933 or 1934. I didn't know Jules was here. I knew he was here, but didn't even think about it, and happened to run into his place by chance. That is how we renewed our friendship.

Q. You started working for him when?

A. In 1936.

Mr. Campbell: Just a minute, let us finish--

Mr. Belli: I am sorry. Go ahead.

The Witness: The book was not doing so well and I realized it, being a business man. I have saved the \$721 and I had come here and I had been in the chips and out of them and I began to save, as I always did—and I might say, I am not wealthy today nor am I broke by a long shot. But I began saving money and these boys got themselves pretty badly tied up in a financial matter and I phoned Mrs. Wild about the situation and told her what it was and she came over and sat around for a few days trying to straighten it out, but she could not, and showed no disposition to put up [90] any money. I knew Jules for a long time and we had worked together in the War Community Center and I did not want to see that thing go to pot and I loaned the boys \$400, which

(Testimony of Julius Krakauer.)

was a good portion of what I had. When Jules came back he gave me half, I think, and the rest when he returned. But I didn't go to work for him until quite some time after that, I think in 1936.

Q. After you went to work for him, you did not do any other work other than for Julius.

A. That's right.

Q. And he paid you \$10 a day?

A. I think we were on a six basis, then eight, and then ten dollars. It ended at ten, but I don't know just when it began, sir.

Q. When was it you loaned him the \$3,000?

A. Mr. Belli, I loaned him off and on many a time. I will say at one time had all of but \$1,000 of my bank roll, when Seabiscuit won the Santa Anita Derby, because the night before, Friday night, he had to cover all the money. He had to pay off, because it is one of the canons of the trade to be able to pay.

Q. How much was your bank account?

A. I once showed him—there was \$8,000, and I had showed him I had him on the scratch of a pen for about \$7,000, and if something happened when he drove up from Santa Anita, I [91] think I would have had a tough time collecting that from his estate.

Q. About being a follower of the horses, on this Seabiscuit episode that you speak of, when was that?

A. 1940, when Seabiscuit won the Santa Anita

(Testimony of Julius Krakauer.)

Derby, in March—I think it was the 21st they won it. It is 1940, the Santa Anita Derby, anyway. Seabiscuit won when nobody thought he would even go to the post.

Q. And your bank roll had gone up to about \$8,000 in 1940? A. Yes.

Q. What was your bankroll when you lent Julius? A. I don't think I will tell you.

Mr. Campbell: We object to that as immaterial.

The Court: Objection sustained.

Mr. Belli: May we approach the bench on that? I assume your Honor it is vitally material, for otherwise I would not ask it.

The Court: Then you will assure me you will demonstrate the materiality.

Mr. Belli: Yes, I do, Judge.

Mr. Campbell: I think that should be done outside the presence of the jury. The witness apparently has some reluctance that should be protected in his own financial affairs, and it has no materiality here.

The Court: Let us discuss it at the recess time. Pass [92] that and we will discuss it later at the recess period.

Mr. Belli: Yes, your Honor.

Q. As a matter of fact, when you were working for Julius for this \$10 a day you were betting too, weren't you? A. Yes, a little.

Q. Julius had quite a few arguments with you, didn't he, that he didn't want you to bet?

(Testimony of Julius Krakauer.)

A. In the book, and a rule that I never violated, but maybe the others employed by him did—in the book.

Q. And many of his other employees did, did they?

A. Many of his other employees bet in his book. Many bookies don't allow their employees to bet in their book, and I never violated a rule when I work for a man. I always followed his instructions.

Q. You would go outside and bet in some other book? A. Yes, but in a very small way.

Q. By the way, you left there, you agree, on a Saturday? I think I might have a piece of paper here that would refresh your memory, anyhow, it was September of what year?

A. When I left him?

Q. When you left Julius.

A. The 25th of September, 1943.

Q. And you had a conversation with someone whose name begins with "C".

A. Clarence Collard. [93]

Q. You told Mr. Collard you were going to take the paper so he told you you could not?

A. No, I told him I was, and I told him why, that they were in connection with these cards, and Clarence was embarrassed and trusted me. We were good friends. But I told him I wanted him to know this, and he said he trusted me.

Q. He had told you, as I understand it, that it was all right to take some of these things.

A. He did not object to it when I explained why I was taking them. Although I can say—

(Testimony of Julius Krakauer.)

Q. As a matter of fact, Mr. Krakauer, when you left Julius there was quite a stormy session, wasn't there?

A. Yes, if you want to call it that in view of the past pleasant relations.

Q. Wasn't there a question of your taking some money from Julius?

A. Yes sir, that is the reason I left, because he had done or made similar accusations to others and I made up my mind the first time he did it to me, I was not going to be there any longer.

Q. How much did he accuse you of taking?

A. Oh, I don't know, it was—

Q. Roughly—

Mr. Campbell: Let him finish.

Mr. Belli: I am sorry, go ahead. [94]

The Witness: It was mostly concerned with his proposed sleepers.

Q. Roughly, how much did he tell you he thought you had stolen from him?

A. I don't know, but any sum he had mentioned would have made me take the same action.

Q. Was it \$5.00, or more or less?

A. I was holding a good position, and could have made a bond at that time there, or any time, and have made bonds.

Q. Give us the conversation when you left there and Julius accused you of stealing? What did he tell you?

A. He said the difference between the amount of sleepers that were being turned over to him

(Testimony of Julius Krakauer.)

at this time as compared with a few months ago—I don't know, a week or a month ago. were smaller. I called his attention to the fact that he had forgotten that I had suggested to him as good business policy, being a business man, that every now and then we collect some of our better bettors and say, "Here, Jo, Jim, or John, here is a bet you made that you don't know you won and here is the money." I did that many times sir. I called his attention to that and he still persisted that there was no dishonesty and I said, "I am quitting to-night."

Q. From whom else did you hear that he accused you of dishonesty? A. I don't know.

Q. You have no animosity toward Julius?

A. I bear him no ill will.

Q. You bear him no ill will?

A. No, except I wouldn't have liked anybody to make that accusation. I have a pretty fair reputation in the world, I think.

Q. By the way, you are what is called the informer in this case aren't you?

A. I don't know whether you will call it that or not. I don't know anything about that.

Q. Well, whatever we call it, it makes no difference, and I will withdraw that. Are you familiar with the percentage you would get if there would be a fine or recovery here?

Mr. Campbell: Just a minute, that is objected to, as incompetent and out of place.

The Court: Objection overruled.

(Testimony of Julius Krakauer.)

The Witness: I know nothing about that.

Mr. Belli: Q. You know nothing about that?

A. I know nothing about that.

Q. You don't know that you would recover ten to twenty percent for informing?

Mr. Campbell: There is nothing showing that this man knows anything about that.

The Court: Objection sustained.

Mr. Belli: Let us get into that, then, a little further. [96] When you left Julius, there was a big fight there?

A. I wouldn't call it that, sir. He had made the statement earlier in the day, or the night before, I do not remember which, as to his position in this matter about the sleepers, and the next afternoon, just before closed, he said, "Turn those sleepers over to Collard," intimating I was still to work there, and I had explained the conversation we had, and how we had handled it, and showed him in my record the number of bets I turned over voluntarily to people as a matter of good will. He still persisted in it, and of course wouldn't turn these sleepers over to Mr. Collard and continue to work in my regular position. There was not any big row, as you seem to indicate.

Q. Before I forget, Mrs. Wild was asked to put up money and she demurred, she didn't do it.

A. She didn't do it.

Q. She had the cash in the safety deposit box?

A. I don't know anything about that.

Q. What was the conversation with reference

(Testimony of Julius Krakauer.)

to it? A. I called her up—

Mr. Campbell: Just a minute, that is objected to as incompetent, irrelevant, and immaterial and having no bearing on the issue here. [97]

The Court: Sustained.

Mr. Belli: I am going to show the source of funds in the whole audit, your Honor. May we hold that also in abeyance?

The Court: Yes, we might discuss that phase of it also. I intend to allow you considerable latitude in the examination of this witness, counsel, and I will reserve ruling on that.

Mr. Belli: Q. Getting back to these cards, why was it you took them?

A. After I began to consider the possibility that I was in effect what he finally told me I was—mixed up in this tax matter as much as he was—I am sorry I gave those cards to Mr. Callahan. I don't mind telling you that. I was sorry I did that and I wish today I had not.

Q. But on these cards here, you made up your mind to take those before you left there, didn't you?

A. They were there all the time. If Mr. Wild had any desire to get ahold of and destroy them, he could have.

Q. He could have?

A. Yes, sir, they were there in the drawer.

(Document shown by Mr. Belli to Mr. Campbell.)

The Witness: I mean, before I went—

(Testimony of Julius Krakauer.)

Mr. Belli: Just a minute. Let us proceed by question and answer.

Q. Is that your signature there, Mr. Krakauer?

A. Yes. [98]

Q. Is that Julius' signature?

A. Yes, I believe it is.

Q. Was Julius drinking quite a bit in this period of time?

Mr. Campbell: Objected to as immaterial.

The Court: Objection overruled.

The Witness: A. Just before that I think he was.

Mr. Campbell: Q. Will you keep your voice up, Mr. Krakauer?

A. Just before that I think he was, but I am not sure of the dates. He periodically did drink.

Mr. Belli: Q. He periodically used to go on some good ones, didn't he? A. Yes, sir.

Q. And they would last over quite a period of time? A. Yes, they would.

Q. And when he would go on these good ones, who would sort of run the business?

A. I was usually called upon to take care of the finances for him and then I would tell him about it and we would arrange the matters alone.

Q. And by going on a good one, that would extend on how many weeks?

A. Not over two or three weeks. Some of them didn't last that long, but I have seen him on a three-week bender, I believe.

Q. Where would he go on those benders—out of town? [99]

(Testimony of Julius Krakauer.)

A. No, unfortunately he would stay around the place.

Q. Was he intoxicated when he signed this, do you recall?

A. I don't know; I don't think so. His signature is rather shaky. It always has been.

Mr. Belli: We offer this in evidence as our first exhibit in order.

Mr. Campbell: No objection.

The Court: One moment. Is that offered in evidence?

Mr. Belli: Yes, your Honor.

The Court: No objection?

Mr. Campbell: No objection, no, your Honor.

The Court: It may be marked as Defendant's Exhibit A.

(Document dated September 29, 1943 signed by Julius Krakauer and Julius Wild was thereupon marked Defendant's Exhibit A.)

Mr. Belli: (Reading) "San Francisco, California, September 29, 1943.

"To whom it may concern:"

This is signed by you, Mr. Krakauer, and apparently I can not make it out, but it looks like Julius Wild.

Mr. Campbell: I will stipulate it is his signature.

Mr. Belli: (Reading) "This is to certify that the parties whose names are affixed hereto, do affirm that the following is a correct statement:

"I, Julius Wild, do certify that I have paid Julius [100] Krakauer all monies due and owing,

(Testimony of Julius Krakauer.)

either as salary or loan, and that I have received from Julius Krakauer all keys, records, accounts, chattels or other materials to the best of my knowledge.

"I, Julius Krakauer, do certify I have received from Julius Wild all monies due and owing either as salary or loan and I have turned over to him all records, chattels and other materials that belong to him that were in my possession," and then the signatures.

Q. At that time you had purloined or taken, if you prefer, these cards?

A. May I say to you—?

Q. You may say anything you want. We have no restrictions.

A. At that time Mr. Callahan said that he wanted to see me and I told him I would see him at the Day and Night Bank after opening where I had to go anyway, and I signed that statement in the bank.

Q. You did not read it?

A. I did it, and I told Mr. Callahan I excepted specifically the records that referred to the cards I had given him and stated to Clarence Collard on Saturday when I left that I was keeping them.

Q. You have a distinct recollection of telling Mr. Callahan when you signed this statement on September 29, 1943 that you were excepting therefrom these cards which are now Government [101] Exhibit 8, 9 and 7, is that right?

A. Yes, and I told him why, and furthermore, Mr. Callahan told me then as he has told me

(Testimony of Julius Krakauer.)

many times since that I must remember that he was making out Mr. Wild's tax returns and instructions from Mr. Wild.

Q. Which bank was that that this conversation took place in?

A. In the Day and Night Bank, which was just the meeting place. It had no bearing on it.

Q. How did you happen to meet Callahan?

A. I was going down there anyway and he said that he wanted to see me.

Q. That was after—

A. That was after September 25.

Q. Was it after Mr. Wild fired you?

A. It was Saturday night, September 25. It may have been Monday or it may have been Tuesday.

Q. But it was after Mr. Wild fired you?

A. I don't know whether that is dated or not. Is it dated?

Q. Do you recall the episode at the bank being after Mr. Wild fired you?

Mr. Campbell: I object to the question as assuming a fact not in evidence, that he was fired?

Mr. Belli: Q. Well, weren't you fired, Mr. Krakauer? A. No, I was not.

Q. You quit? [102]

A. Yes, because Mr. Wild would have let me go on working if I had taken those sleepers over to Mr. Collard. There was no question about that and the others in the office knew that. I wouldn't work under those conditions.

(Testimony of Julius Krakauer.)

Q. What did you take these cards in, a shoe-box, or what?

A. Those cards for a long time were kept in a locked box to which he had one key, in a box which he wanted to keep things in. So he must have been satisfied with them.

Q. When you first started to work with Julius and set up this system of cards here, whose idea was it, by the way, to set up a card system?

A. I told Mr. Wild if I was to handle the money and be responsible for it I wanted some way of keeping track of it and protecting myself and him too.

Q. Did you keep your own records the same way as this in that place of business?

A. What?

Q. Did you keep your own records the same way as this in that place of business?

A. Mr. Belli, I can tell you any one day, each evening, exactly how I stand in this world. That has been my habit all my life. Of course, I had an expensive business at one time where that was not true, but in my personal affairs I can tell you at the end of every day.

Q. I can not ask you that until after the recess. [103] A. I understand.

Q. With reference to the figures on the cards, you compared the figures you had with the figures Mr. Callahan had, and can you tell us what the absolute figures were on those cards?

A. I don't know.

(Testimony of Julius Krakauer.)

Q. You recall a moment ago when I objected on direct examination that there were some figures Mr. Callahan had produced and you said decidedly that those were not in conformity with the conclusions on your figures. A. Yes.

Q. Could you tell us what the figures were that Mr. Callahan had produced?

A. I don't know. He just called them off. There were two sets of figures on each card as I remember. He called them off. I have no way of telling where he got them or where they came from.

Q. No, we are not concerned with where they came from or where he got them. But you have no idea now what they were. A. No.

Q. But you have a distinct recollection that did not compare with the set of figures that you have?

A. I will tell you why, because Mr. Callahan said they did not.

Q. Then, it is what Mr. Callahan said and not what you recollect. [104]

A. I don't mind telling you that I was rather amused about the whole proceeding and told him, and he said, "Never mind, I am doing just what I am told," and I told him that those figures were not—he said, well, "Put them down, they have to be in your handwriting."

Q. You say you told him those figures were not—were not what? What were they?

A. They were supposed to be the take for every month. There were twelve cards and this was for

(Testimony of Julius Krakauer.)

a year, and this was for the take and expenses. As I remember, there were only two sets of figures on each card.

Q. Do you have any recollection of what they were? A. No.

Q. How could you tell Mr. Callahan they were not correct if you don't recall what they were?

A. Because I kept these other figures every day and I had a pretty good idea when I keep them, that here is a man that brings you an entirely new set of figures and you know pretty well whether they are in line or not. And that is for a month, mind you, and I knew pretty well the take every month, and I knew that was not correct.

Q. I thought these were composite—

A. No, they represented the total figure of each month for the year 1941.

Q. It was the total, then? [105]

A. Yes, for each month take and expenses.

Q. You can not give us an idea of what the total was?

A. I don't undertake to, sir, because I am telling you how they were produced, out of thin air.

Q. Did you see the total?

A. He made me write them. He said they had to be in my writing.

Q. I see. Now we have them in your handwriting. A. Yes.

Q. And you did see them?

A. Yes, on his vacation I put them down.

(Testimony of Julius Krakauer.)

Q. In your handwriting?

A. Yes, they had to be in my handwriting.

Q. And you haven't any recollection whatever what the final single figure was?

A. On each month I don't undertake to remember.

Q. There is no final figure?

A. No, I wish I kept a copy of them, naturally.

Q. Why?

A. Because I would be able to answer your questions far better than I am doing.

Mr. Campbell: Don't volunteer statements.

The Witness: Of course, sir.

Mr. Campbell: Confine yourself to the questions which are asked you by counsel. [106]

The Witness: I am sorry, sir.

Mr. Belli: Q. What sort of records did you keep besides these?

A. None except the record of the sleepers. That is all.

Q. Do you think you could prove what with these records here?

Mr. Campbell: Objected to as incompetent and immaterial.

The Court: Objection overruled.

The Witness: A: I kept those because Mr. Wild wanted to know what his business was doing month to month.

Mr. Belli: I mean, when you told Julius you had given all of the records back to him and kept these, what were you intending to keep these for, to prove what?

(Testimony of Julius Krakauer.)

A. To protect myself against the possibility of being currently involved as he indicated I might be.

Q. How long after the date of September 29, did you go to the Internal Revenue Department with respect to these cards, with these cards?

Mr. Campbell: Just a minute. That is objected to as assuming he went to the Internal Revenue Department.

The Court: Objection overruled.

The Witness: I don't know.

Mr. Belli: Q. Did you go to the Internal Revenue Department, so we will have that?

A. I think it must have been, oh, quite some time after—I don't know, sir. [107]

Q. And you at that time had a deep feeling for friendship for Julius?

A. I don't mind telling you, sir—

Q. And I don't mind hearing you.

A. —that it was not a question of friendship in that case; but I never did feel in view of the amounts of money that I turned over to Julius and kept the books for him, that he had paid his just share of taxes, in fact, less taxes than I did personally, especially as we were then engaged in a war effort in which I had two sons.

Q. When did this great feeling of righteousness strike you, after Julius accused you of stealing?

A. It was before that period. I kept them for my own protection in case I was implicated.

Q. Did you ever go to Julius to tell him that you were disturbed and that you could not sleep

(Testimony of Julius Krakauer.)

nights because of the war effort, and he not paying his just share of taxes. A. No, I did not.

Q. When did that smite you so that you took or purloined these cards?

A. After the fight. I don't admit that I purloined them.

Q. Well, let us say, took them; did this feeling about his dereliction in payment of taxes strike you prior to the fight?

A. Yes, I told him at the time that he came to me that first [108] day that he would have a lot of explaining to do.

Q. What did you tell him to do at that time?

A. I didn't tell him to do anything.

Q. About the war effort, and so forth, did you say something about that then?

A. Yes, I once told him that my contributions to the Red Cross and other charitable efforts in those days were more than his. That is when we had another little row.

Q. How much were his?

A. I have a pretty good idea.

Q. Well, will you be charitable enough to tell us? A. I don't know exactly.

Q. Why, Mr. Krakauer, you must know.

Mr. Campbell: Let him finish his answer.

A. But I know mine were in excess, because I had told him one day, and mine were in excess.

Q. You have no idea what his were?

A. I think they were around \$50, perhaps.

Q. \$50 what?

(Testimony of Julius Krakauer.)

A. This happened to be Red Cross.

Q. Yes, but what year and what period?

A. I wouldn't undertake to say.

Q. By the way, how did he pay to the Red Cross, in cash, check or what?

A. Cash, I suppose. I just asked him. We were discussing, [109] this matter was all.

Q. Which year was this, Mr. Krakauer?

A. It must have been the year 1941, or maybe 1940.

Q. 1940 or 1941?

A. Yes, I couldn't say. Julius and I were friends and like all good friends we got into squabbles once in awhile and I was a little hot-headed and so was he.

Q. We want to keep you good friends, but in 1941, 1942, and 1943, you got into a squabble over the contribution to the Red Cross, and we won't go beyond the limits of relevancy in this, but you recall there was a \$50 contribution by Julius?

A. Yes.

Q. And your contribution was what?

A. About \$30—just in proportion very much greater than his.

Q. You mean in proportion?

A. Yes, in proportion, not actual figures.

Q. Who was present in this altercation?

A. I don't know—probably down there in the evening.

Q. You say "probably", do you have a recollection?

(Testimony of Julius Krakauer.)

A. I don't have a recollection who was in the room. Every once in awhile those things do come up.

Q. As a matter of fact, Mr. Krakauer, don't you know that Julius' contributions to the Red Cross and charity were far in excess of yours?

A. I was only talking about one item. That is the one we had [110] out at the time.

Q. Will you grant us this, that Julius' character in general, and this is not an irrelevancy—wasn't he extremely liberal and generous to people who would come into the betting establishment of his?

Mr. Campbell: I object as incompetent, irrelevant, and immaterial.

The Court: Overruled.

Mr. Belli: Yes or no?

A. I cannot say yes with any enthusiasm because I think a part of it was reputation, Mr. Belli. I think I am justified in that.

Q. What do you mean by that?—"A part of his reputation."

A. Well, some people have a reputation for being generous because they do it with a show.

Q. He had a reputation of being generous, but it is your opinion that he was not?

A. In my opinion, that was not entirely justified to the extent that he enjoyed it.

Q. In fact, it was so to the contrary you chided him for his penuriousness in his donations?

A. I will stand by the statement that he was not entirely justified.

(Testimony of Julius Krakauer.)

Q. We won't pursue that any further except to ask you, does Bob Hughes know about that? [111]

A. I wouldn't undertake to say.

Q. Who knew him best in the business? I would not say who was his best friend, but who knew him best in the business?

Mr. Campbell: I object to that as immaterial.

The Court: I cannot see how that would aid or assist the court and jury in this matter. [112]

Mr. Belli: Shall we take the recess, your Honor?

The Court: Yes, we will take the afternoon recess.

Ladies and gentlemen, I give you the same admonition as heretofore, not to discuss this case among yourselves, nor converse with anyone on any subject connected with the trial of this case, nor are you to form or express any opinion thereon until the case is finally submitted to you.

(Thereupon the jury retired from the courtroom and the following proceedings were had outside of the presence of the jury:)

The Court: Counsel, on these several matters, first with respect to the admissibility of the testimony on that phase of the case, the first question was objected to. What have you to say on that?

Mr. Belli: I have forgotten it, but I have listed three of them.

The Court: Take them up in the order that you desire.

(Testimony of Julius Krakauer.)

Mr. Belli: The first one was when I asked Mr. Krakauer the present state of his assets. I do know and I believe it would be admissible because here are some records that are kept entirely in Mr. Krakauer's handwriting and I am going to show some irregularities, some discrepancies with respect to these records and it is our sincere contention that the motive of Julius Wild in discharging Mr. Krakauer was not entirely without foundation. [113]

(Thereupon argument was had between counsel for the respective parties.)

The Court: At the present time I don't think we should have to try a collateral matter. However, I will allow counsel to interrogate the witness with respect to his financial condition at the time he left the employ of defendant, or an immediate time thereafter. I think we all agree that is certainly admissible.

The second point is what, Mr. Belli?

Mr. Belli: The second point is about Mrs. Wild's money. I have not gone into our defense as thoroughly as I should, but between now and tomorrow I will, and I am going to have to show he borrowed, Julius Wild borrowed from Maxferds and borrowed from Mr. Krakauer and borrowed also from his wife, and I do believe the wife had some cash when they gave her that case out of a safe deposit.

(Thereupon arguments were presented to the Court on behalf of the respective parties.)

The Court: You might pursue that in some other form. I will sustain the objection of Mr. Campbell.

(Testimony of Julius Krakauer.)

Mr. Belli: As to the third point, the question of the proceeds of any recovery there would be in this case and the percentage available to the witness—

The Court: I did not foreclose you on that.

Mr. Campbell: Yes, he answered that already that he did [114] not know.

The Court: You entered an objection to the question, and I overruled the objection, Mr. Belli, and the witness answered.

On the question of the comparative analysis made by the witness with respect to the amount submitted by Mr. Callahan, I overruled an objection and reserved ultimate ruling. My ruling is the same.

Mr. Belli: Of course, there were no absolute figures.

The Court: But the clear purport of the testimony is manifest now. That is my ruling.

We will take a five-minute recess.

(Recess.) [115]

The Court: You may proceed, gentlemen.

(The Witness Krakauer resumed the stand.)

Mr. Belli: Your Honor, I wonder if I might have the privilege of having Mr. Bower, my accountant, sit at the counsel table with me. He is not a member of the bar.

Mr. Campbell: No objection.

The Court: Certainly, that is permissible.

Mr. Belli: Q. Mr. Krakauer, I think that you had told us that you, over this period of time, '41, '42, '43, paid more taxes than Julius did?

(Testimony of Julius Krakauer.)

A. I said I had an idea I did. I didn't say positively I did, sir.

Q. Well—

A. I don't know what he made. I never saw his return, sir.

Q. That was the next question to it, and you had never seen the return?

A. Never saw his returns.

Q. Let's come back to the question—

A. Didn't see the return we argued in question nor any of the others, ever.

Mr. Campbell: Mr. Krakauer, I think we could proceed faster if you would confine yourself to answering the questions and not volunteering information.

Mr. Belli: I have no objection to him saying anything he wants to say. [116]

Mr. Campbell: I prefer to proceed in an orderly fashion.

Mr. Belli: Q. I am permitted to ask you now, Mr. Krakauer, your financial, shall we say, worth when you were fired by Julius—or strike that, and let's put it this way: When you left Julius?

A. I would have to look that up. I can't give it to you out of my head.

Q. You can't tell us—

A. I wouldn't undertake to. I am too careful about figures. I wouldn't do that.

Q. Where would you look?

A. Bank accounts and some investments I have. I would have to go back. I would have to go to the bank and get some statements if I haven't got

(Testimony of Julius Krakauer.)

them. I wouldn't undertake to give you any figures as important as that out of my head.

Q. Well, could you give us any statement as to your net worth at that period of your life when you had left this dear friend of yours?

A. I don't want to do it, sir. I don't think I am justified in doing it.

Q. Well, could you do this? Could you tell us if it was a thousand dollars or \$50,000?

A. It was more than a thousand and not fifty thousand; that is all I will say, because I wouldn't—I have worked with figures all my life, more or less, in big business and little [117] business, personal business and otherwise, and I don't want to do it.

Q. Well, was it big business about that period of time or little business that you were in?

Mr. Campbell: Oh, that is objected to as argumentative.

Mr. Belli: All right.

Q. Haven't you any idea how much money you had when you left Julius?

A. No, sir, I have not. I couldn't undertake—that is five years ago.

Q. Were you broke when you left him?

A. No, sir, I wasn't. I have never been really honestly broke in my life, sir.

Q. Well, then, you are going to look tonight in your records and ascertain how much money at least you had when you left Julius?

A. In 1943?

Q. 1943.

(Testimony of Julius Krakauer.)

A. It wouldn't be all money, it would be, some of it would be investments.

Q. Investments in what? A. Stock.

Q. What stock?

A. Well, I don't intend to—you don't want me to tell you what stock I have—when a person buys a few stocks and sells a few [118] stocks, what I did on that particular date. I wouldn't undertake to do that.

Q. Was your account at the brokerage office as numerous as that?

A. No, I might have had none on that date, because one gets in and out of those. That is an exact date you are trying to fix me to.

Q. Were you trading on the stock exchange as well as betting on the horses?

A. Very small amount.

Q. With whom did you have an account, Mr. Krakauer?

A. Probably Swift & Company, but I wouldn't say as to that date.

Q. Well, what other brokerage accounts, other brokers' offices, did you have accounts with?

A. Just one.

Q. So if you had an account with anyone, it would be Swift & Company on that date?

A. I am not sure of that, sir.

Q. Do you deal with any other brokerage accounts, yes or no? A. At that time?

Q. Yes, during the years from 1939, whatever the period was there, up to '43.

(Testimony of Julius Krakauer.)

A. There was, it might have been a concern that was on the corner of California and Bush, whose name I can't even recall. [119] They are out of business now.

Q. Well, they would be out of business if they were on California and Bush.

A. Well, they were on—oh, I mean California and Montgomery. Did I say Bush? I am sorry.

Q. Moulton, or Blythe? A. No.

Q. Barth?

A. I will have to look it up for you; I will be glad to.

Q. All right, but you are going to tell us at the beginning of tomorrow's session, about what your assets were in 1943, in September, will you?

A. Yes, sir. If I can get them overnight. I will be glad to, very glad to.

Q. You have your income tax returns for that year, don't you? A. Yes.

Mr. Campbell: I submit that that is a non sequitur. Income tax returns do not reflect net worth.

The Court: The objection is sustained.

Mr. Belli: Q. They might reflect your income, hmm? A. Oh, they would, naturally.

Q. I don't know how "naturally", but will you look and see?

A. As far as I am concerned, they would.

Q. We won't pursue that any further. Do your best on that. Now, with reference to these tickets—Now, as I understand you, [120] Mr. Krakauer, you left Mr. Wild, and when you left him you had these

(Testimony of Julius Krakauer.)

tickets and you took those to the Internal Revenue on what date? A. I don't know, sir.

Q. Well, about when?

A. I really couldn't answer definitely. I don't want to answer indefinitely. You are tying me down to a date I don't know.

Q. No. I am only asking you to do what all of us try to do in recollecting past events; give us your best recollection.

A. Let me look that up for you, too. I might have some memorandum on that, too. I don't know.

Q. Do you keep memorandums of these things?

A. Well, in most matters that are important, especially with reference to finances and other things, I do. Other things I don't bother about.

Q. Would you be good enough to bring any memorandums you have tomorrow with reference to when you went to the Internal Revenue, anything with reference to how much money you were making, and anything with reference to finances in '41, '42 or '43? Would you do that?

A. You want—Well, you want to know what?

Q. I want all the memorandums that you have during those years, of your financial transactions. Would you bring them?

A. They wouldn't, they would be just merely bank accounts. [121] I will tell you what I was worth. You want to know what I was worth on September 25, 1943. I will be glad to tell you that, sir.

Q. All right. And if you have memoranda,

(Testimony of Julius Krakauer.)

would you bring those tomorrow? I mean, you say you will have memoranda?

A. No, I am not going to bring any substantiating evidence unless I am ordered to with reference to my bank account and all that. I will give you a statement of my worth on September 25, '43, which is the date on which I left Mr. Wild's employ. I will be glad to do that. I have nothing to hide.

Q. With reference to the memoranda that you might have at the time that you went to the Government, do I understand that you did keep a memorandum or write a memorandum?

A. I don't know. I am just telling you that I might have it. I will be glad to tell you if I can find it.

Q. Where would you look?

A. Oh, I have a file.

Q. What is the file called?

A. Oh, just a personal letter file or something. I may have it. I would rather give it to you exactly, rather than guess at it.

Q. But you don't know whether you have it or not, now? A. No, sir, I don't.

Q. Well, do you have a recollection if you did make such a memorandum? [122]

A. I am not, I wouldn't say as to that either.

Q. Were you in the habit of making memoranda about these things?

A. I don't make memoranda about a good many things, important things of that kind.

(Testimony of Julius Krakauer.)

Q. See if you can find that and bring that to us.

A. O.K.

Q. As I understand it, then, these records that you brought—by the way, the figures that were on the cards for Mr. Callahan were only pertaining to 1941, weren't they? A. That's correct, sir.

Q. Yet you took '42 and '43, up to the time that you were there—

Q. Well, the reason I took '42, because Mr. Callahan came to me, also on Mr. Wild's request, and asked me to make up a similar set of cards when he was making Mr. Wild's '42 return, and I refused to do so.

Q. When was that?

A. That was whenever Mr. Callahan, that was probably before March 15 of the following year.

Q. He asked you to do what, to make up what?

A. Make up a similar set of cards, the same as I had with reference to '41, and I refused to do so.

Q. Who was present during that conversation?

A. Mr. Callahan and myself. Mr. Wild had asked me to see Mr. [123] Callahan about it. I didn't even know what Mr. Callahan wanted, and then he told me and I refused to do so.

Q. Was there a duplicate set made up?

A. No, no, that was with reference to '42.

Q. Well, the one that, if I remember correctly, is this copy in your own handwriting—you did copy some figures?

A. That had reference to the return of '41, which was requested in '43 by someone from the Internal Revenue.

(Testimony of Julius Krakauer.)

Q. Well, when you were making those, did you think that you would be brought in by the government on income tax matters?

A. No, but I didn't know how culpable or criminally involved in the matter I was.

Q. Did you think then that you were helping Julius defraud the government?

Mr. Campbell: That is objected to as immaterial, what he may have thought. The ultimate question is what he did.

The Court: Overruled.

The Witness: What is the question?

Mr. Belli: Q. When you were making up, as you say, this list of cards, containing these numbers that Mr. Callahan gave you, did you think when you were doing that that you were helping Julius defraud the government on income tax?

A. I had reason to believe that those figures were being used, and that they were not correct, and if there was any question about his income, I certainly was a party to it, if there was [124] any deficiency or question about that particular return, I was certainly a party to it, my making up these cards.

Q. And yet you stayed with Julius until September of '43, a couple of years later?

A. No, this was in '43, sir, just a few months after that. This question came up in '43 with reference to the return of '41, and it was only a few months after that.

(Testimony of Julius Krakauer.)

Q. In '43 you were going to make cards up for '41?

A. No, I didn't make up any cards, they were already in existence.

Q. But as I understand it, you took some figures from Mr. Callahan in '43 and made up cards for '41?

A. Yes, these 12 cards, about, only, which Mr. Wild asked me to make up to substantiate a return of his income tax in '41 which was being questioned in '43.

Q. Mr. Krakauer, anyone having these cards in their possession could change these in '44, '45, '46, to reflect something in 1941 or '42, couldn't they?

Mr. Campbell: Just a moment. Objected to as argumentative.

The Court: Sustained.

Mr. Belli: Q. Didn't you change a couple of these cards, Mr. Krakauer?

A. No.

Q. What? [125] A. No.

Q. Sure of that?

A. I am. I might have changed it, purely as a matter of correction of arithmetic, but not as to fact or accumulation, because—

Q. When did you change it, probably as a matter of arithmetic, all these cards, after you signed this paper with Mr. Wild that you didn't have these cards?

A. I would have to change Mr. Hughes' figures, too. I don't think you will find any change in Mr. Hughes' figures there.

(Testimony of **Julius Krakauer.**)

Q. I understand you to say that you might, as a matter of arithmetic?

A. That is during the time—

Q. They are finished?

A. During the time I was—

The Court: One moment. Counsel hasn't finished his question.

The Witness: Sorry.

Mr. Belli: Q. I understood that you said you might have changed some of these cards—

A. I did not change a card.

Q. I would like to finish my question, Mr. Krakauer, if you will grant me the courtesy. I understood you to say that you might have changed certain arithmetic in these cards; I understood that was after—if it is on this paper—September 29, [126] 1943. Is that right or wrong?

A. I say this, that if there are any corrections of those weekly cards, 52 weekly cards, they would only be corrections as to an error in arithmetic, addition, subtraction or something of that kind.

Q. When did you make any of those corrections?

A. At the end of the week because I went—I always balanced from the first of the week the accumulations to the end; if there was any discrepancy, why, I had to make the correction because I started with a certain amount of money, it was added and deducted from it, and at the end of the week the accumulation had to balance, sir.

Q. But you started from scratch and afresh on the following Monday, didn't you?

A. Yes, sir, whatever was left. Then that week

(Testimony of Julius Krakauer.)

had to balance again. Each week had to balance.

Q. But there was no running account from Friday to the following Monday; in other words,—

A. There was—

Q. All right, you go ahead.

A. Pardon me, go ahead, I am sorry.

Q. It only went as far as the week. In other words, you would run from Monday to Friday or Saturday, and then you would stop and then start an entirely new set of figures, wouldn't you, the following Monday? [127]

A. No, sir, the figure of the money on hand was carried over to Monday.

Q. Well, wasn't it always \$300 that was carried over to Monday? A. Not always.

Q. By the way, how many other employees did Mr. Wild accuse during this period of time, of stealing? A. Well, two, I believe.

Q. Did he fire those, Mr. Krakauer?

A. He—

Q. Yes or no. A. No.

Q. You were the only one?

A. He didn't fire me, I quit.

Q. You were the only one that quit, let us put it that way. A. Yes, sir.

Q. After an accusation of stealing, right?

A. Yes, sir.

Q. What? A. Yes, sir.

Q. Thank you.

A. Which involved only a matter of about three weeks' time, however.

(Testimony of Julius Krakauer.)

Q. Now, coming back to these figures again, you don't contend, do you, that you understand what Mr. Wild made by way of income [128] or lost during the period '41, '42, '43? Your answer is no? When you shake your head—

A. No, sir, except what those figures show, that he made in that particular operation.

Q. All right. Now, all of the cards are not here, are they, for these three years?

A. Only the accumulated cards for each week; the others were always destroyed, even the ones that I—totally destroyed, completely sir.

Q. But you can't go through here and get the number of weeks that he was open, can you?

A. Yes, you can get the number of weeks.

Q. There is a card for every week that he was open?

A. Except there is one set there that has a period of several weeks where we just kept a sketchy memorandum that, when the place was closed. You will find the cards.

Q. That was closed, but partially open at times?

A. Yes, sir.

Q. All right.

A. Well, the whole thing didn't amount to anything, the cards will show that.

Q. Now, I think you told us that about 90 per cent of Mr. Wild's business was done in the room, isn't that correct? A. I should say—

Q. By the "room" we refer to— [129]

A. Well, I should say—

(Testimony of Julius Krakauer.)

Q. Will you let me finish, Mr. Krakauer, please? Ninety percent of his business, you tell us, was done in the room, and by "the room" you mean the place that reflects itself in this business and these cards?

Mr. Campbell: Now, just a moment. I am going to make an objection. I think the vice of these questions and the interruptions of the witness are produced by counsel making a flat statement and then appending some question to it, so that the witness attempts to correct the first statement.

The Court: The question is clear, I think. Do you understand that question?

The Witness: Well—

Mr. Belli: It is a leading question.

The Court: This is cross examination.

Mr. Belli: Q. I mean, I don't want to throw you on that by the form of it. Let's try it again. So the jury will understand, and we will all understand. We have gone this far: Mr. Wild has had a book down there in the basement of the Orpheum or wherever it was done there, and he had a system of bookkeeping whereby he kept a running account through the week here of whatever expenses he had, the janitor, part of the rent he put on there; he would start in with so much money and then at the end of the day pay out the rest of that, and he would take his profit out of it. It was his bookkeeping for his [130] business. Now, that is all the business that you knew about, in other words, the booking over the counter there, hmm?

(Testimony of Julius Krakauer.)

A. In addition, I knew something about his personal affairs, such as he discussed with me.

Q. All right. In addition—let's leave the personal affairs out of it for the time being. In addition to this part of the booking business over the counter there, didn't he himself do a great deal of betting and didn't he cover bets with other bookmakers, like the insurance companies reinsure when they get too heavily involved, didn't he do that when he had too heavy a bet, didn't he do a lot of telephone work?

A. He didn't lay off, except very exceptionally, sir.

Q. All right. Well, let's put it this way: Regardless of the amount that he did outside of that in the room, reflected by the cards, how much it was and whatever it was, you knew nothing about that, did you?

A. Yes, sir, I would know.

Q. You would know?

A. That is, because it was put into the books in the form of a bet.

Q. It was put in here, is that right?

A. Yes, sir.

Q. All right. By the way—

Mr. Campbell: Let the record show that at the time the witness answered the question, counsel picked up and had in his [131] hand, so that the witness might see it, what is United States Exhibit No. 7.

The Court: That may appear in the record as an accurate statement of fact.

(Testimony of Julius Krakauer.)

Mr. Belli: Q. He was going to Caliente, wasn't he, during that period of time, every weekend?

A. In '43, I am not quite sure, but he did for quite a while, go down to Caliente.

Q. And he has got a lot of losses down there in Caliente you know nothing about, right?

Mr. Campbell: I object to the question in that form, if the Court please.

The Court: Sustained.

Mr. Belli: Hmm?

The Court: The objection is sustained.

Mr. Belli: I am sorry, your Honor.

Mr. Belli: Q. Well, did you know or—withdraw that. Where would it reflect in here, his plane expenses to go down and back, and the hotel and the rest of that? A. It would be in there.

Q. Where would it be?

A. I don't know, sir.

Q. You don't know anything about that, do you?

Mr. Campbell: Let the record show the witness shook his head. You will have to speak audibly. The reporter can't get a shake of your head.

The Witness: Okay.

Mr. Belli: Those didn't come in.

Mr. Campbell: I didn't get that.

Mr. Belli: I say, those didn't come in. Those were all losses. Those are just the stubs.

Mr. Campbell: Well, I couldn't testify as to those.

Mr. Belli: Q. Now, with reference to Julius'

(Testimony of Julius Krakauer.)

betting down in Tijuana, did you know that he bet heavily down there?

A. I have never been to Tijuana in my life, or know when he was there, so I wouldn't know.

Q. Well, haven't you heard him discuss when he came back about heavy betting down there?

Mr. Campbell: Just a moment, objected to as incompetent.

The Court: Overruled.

Mr. Belli: Q. Your answer is "Yes"?

A. He often mentioned about his betting down there.

Q. I said "heavy betting". A. Yes. [133]

Q. By "heavy betting" what are these, \$50 tickets (handing to witness)?

A. I don't know much about these.

Q. Well, you know what a ticket looks like on a horserace track, don't you?

A. Oh, yes, these seem to be \$50 tickets, and there is a \$15 one, and there's — I don't know whether that is a \$100 or a \$200.

Q. Let's see, here's a \$100 and a \$200—I have never seen one, myself.

A. There is a couple of five—

Q. That is a hundred?

A. Hollywood. Here's another at Hollywood. He went down there and bet quite a bit, didn't he, in Hollywood, didn't he?

Mr. Campbell: Just a moment, I am going to object to this as being misleading. There has been no foundation laid for these tickets. The question

(Testimony of Julius Krakauer.)

implies that these tickets apparently relate to bets by the defendant, and bets at certain places. The witness has said he has not been present at any time, and I object to the last question as being misleading, if the Court please.

Mr. Belli: Well, I will withdraw it, your Honor, and wait until we put the defendant on the stand.

The Court: It may be in form; however, as I indicated, [134] I will not circumscribe the examination of this witness. I am going to allow considerable latitude.

Mr. Belli: Thank you, your Honor.

Mr. Campbell: May those tickets that were shown the witness be marked for identification?

The Court: They may be marked for identification.

Mr. Belli: We want to keep them in an envelope.

The Clerk: Defendant's Exhibit B for identification.

(Tickets referred to above were marked Defendant's Exhibit B for Identification.)

Mr. Belli: Q. What I am trying to do now, Mr. Krakauer, is to establish and enlarge the magnitude of this betting business of Julius. It consisted of more than one place there at the bottom of the Orpheum Theatre, it consisted of Julius, himself, going to racetracks here, Hollywood, and in Mexico, and betting and in making up tickets for other people, didn't it?

A. I wouldn't be able to say.

(Testimony of Julius Krakauer.)

Q. Well, how many times was he away from the place over here during the years, say, '41, '42 and '43? Wasn't it considerable?

A. Well, he didn't—in '40 he attended the entire meeting at Santa Anita. That is to say, not every weekend. And sometimes he would stay a week or so.

Q. And when he went down there, he went down there for the [135] purpose of making book and betting, didn't he?

Mr. Campbell: Objected to as calling for this witness' conclusion.

The Court: Sustained.

Mr. Belli: Q. In any event, whatever happened down there and at the other tracks, and whatever happened on Julius' other operations, doesn't reflect itself in these cards? Your answer is "No"? A. No.

Q. And you know nothing about that?

A. I do not, sir.

Q. As to whether he won or lost or what?

A. Except from such hearsay as one hears around an office on operations of that kind. That is all. Everybody hears things in business.

Q. Well, I will chance it; what hearsay did you hear about whether he lost or won?

Mr. Campbell: That is objected to, if the Court please.

The Court: Sustained.

Mr. Belli: All right.

Q. By the way, did Julius pay Social Security on his employees?

(Testimony of Julius Krakauer.)

A. Not at first, when I was employed by him.

Q. Well, did he get straightened up and pay it later on?

A. Yes, Mr. Callahan straightened it up for him.

Q. Paid Social Security on everybody there and withholding [136] and the rest of those things, just like it were a bank?

A. As far as I know; it was an operation that called for Social Security, so I suppose she did all the necessary things.

Q. Who did you say you went to first with these cards, Mr. Krakauer? A. I didn't say.

Q. Will you? A. What?

Q. Will you? A. No, sir.

Q. You won't?

Mr. Campbell: Well, now, just a moment, is there a question before him? The question hasn't been asked who he went to.

Mr. Belli: Well, I will ask it then.

Q. Who did you go to, Mr. Krakauer, first, with these cards?

A. I don't remember the man's name.

Q. Well, where was he?

A. Internal Revenue Office.

Q. And when you went up there, at any time did you go up there and tell them that you had had bad blood between yourself and Julius?

A. I did not, sir.

Q. And you are going to find out tonight how long it was after you left Julius that you first

(Testimony of Julius Krakauer.)

went up to the man at the [137] Internal Revenue, right?

A. I will; I will endeavor to give you the exact date.

Q. Did you look up anything about an informer's fee before you went up there?

Mr. Campbell: Objected to as incompetent and immaterial.

The Court: All right, proceed, counsel.

Mr. Campbell: I have an objection to the last question.

The Court: The objection is overruled.

Mr. Belli: Q. Did you look up to see if you would get an informer's fee if Julius got a conviction? A. I did not, sir.

Q. Since then have you heard something about that?

Mr. Campbell: Same objection, objected to as immaterial.

The Court: Overruled.

A. I have not, sir.

Q. You don't know anything about that as you sit there on the stand, what you would get?

A. No, sir.

Q. Did you discuss it with anybody?

A. No, sir.

Q. Did the Government discuss it with you?

A. No, sir.

Q. Are you sure about that?

A. I believe I am sure.

(Testimony of Julius Krakauer.)

Q. What do you mean, you believe you are sure? Either you [138] are sure or you are not. Now, what is it? A. I am sure.

Q. You are sure now? A. Yes, I am sure.

Q. Didn't Julius spend a great deal for entertainment around the place there that didn't go into these cards?

Mr. Campbell: May I have that question, Mr. Reporter? I am sorry, but I didn't hear it.

(The reporter read previous question.)

A. He did some entertaining. We used to have a social card game down there every now and then, but outside of that, I don't think there was any expense to amount to anything, nor did that amount to anything. But if it was, it isn't on those cards.

Q. And with reference, so that we will be clear, to those telephone bets and on the covering that Julius made when the bet was taken in and it was a little bit too large to handle, do I understand your testimony to be that those bets reflect themselves in these cards?

A. Yes, they were not always made by Julius. When Julius wasn't there, Mr. Hughes and myself decided whether our position was too strong on a horse and make a lay-off. But it didn't amount to but just a few dollars.

Q. But there were no coverings outside, that were made by Julius or anyone else, but that they appeared in these cards? [139] A. No.

Q. You are positive of that, sir?

(Testimony of Julius Krakauer.)

A. I believe I am, sir. Of course—yes, I am positive.

Q. Now, you say—withdraw that. Did the establishment run there six days a week throughout the entire year of '41, or could we go through these cards and determine how many days it was open—a card for each day?

A. I think '41 is the one where there was a couple of months there, April and May, that were tight. They were closed.

Q. But if I would go through these three stacks here, I could pretty well tell how many days it was open for these three years, right?

A. Yes, sir.

Q. All right. Did Julius, himself, make any entries at any time on any of these cards?

A. There is nothing in his handwriting on those cards.

Q. Did Julius at any time himself direct you to make any specific entries on those cards?

A. He told me to keep a record, and he saw the cards, knew what was on them.

Q. When would he see them?

A. He would see them every day, in order to determine what the gain was, and to pay the bonus, if any, owed, which would be called for, of a profit over a certain amount. He would have to see it. [140]

Q. Did he at any time tell you to change any of these cards? A. No, sir.

(Testimony of Julius Krakauer.)

Q. Now, you do recall occasions when you changed figures that weren't mathematically correct, is that right?

A. In a very slight amount, just merely to make the bookkeeping or the accounting correct.

Q. Was that before or after Julius looked at it?

A. It would be before, if it amounted to anything, but a few cents; because we had, Mr. Hughes and I always balanced, just to the figure.

Q. With reference to the bonus that was paid at the place, there, how was the bonus arranged between the employees?

A. It was based on so much over \$100. If he made over \$100, why, he paid.

Q. Then every one of the employees participated in the bonus?

A. Yes, sir, I think they participated equally. I am not quite sure of that, however. I wouldn't want to say.

Q. On the subject of being raided there, as a matter of fact, wasn't the place raided 22 times?

A. Well, I told——

Mr. Campbell: Wait a moment, what period of time are you referring to?

Mr. Belli: Q. At least during the period of these cards, here?

A. I said eight or ten times, and I qualified that by saying [141] it would naturally be a guess, because that is a pretty hard question to answer definitely.

Q. And all of the expense for the raids and the rest of those items that you spoke about this

(Testimony of Julius Krakauer.)

morning, they all appear on some sort of a pictograph on here, is that right?

A. Yes, sir, they do. In fact——

Q. Now, you say that in the early part of 1943, someone from the Internal Revenue came down and asked Julius to go to the Internal Revenue?

A. No, he came down and Julius wasn't there, and he talked to Mr. Hughes.

Q. And didn't he talk to Julius at all then?

A. Not then, sir. I was there, so I would have seen him if he had come back and talked to Julius, and I didn't see him talk to him.

Q. Well, then, when the Internal Revenue man came down there, eventually he came over to you—that is, Julius came over to you and said he had to bring his cards to the Internal Revenue?

A. No, sir.

Q. Well, didn't he take some figures up there?

A. Well, the man came in there, and Mr. Wild was not there, and being a stranger, I looked over there and he was talking to Mr. Hughes. Later on, Mr. Hughes came over to me and said that that was a man from the Internal Revenue, and he was questioning a '41 return of Julius'. [142]

Q. Weren't you told then to get some figures?

A. Not by Mr. Hughes; he wouldn't tell me.

Q. Well, did Julius tell you to get some figures?

A. No, the question of getting some figures to substantiate that return was Mr. Callahan, the twelve cards I have mentioned before.

Q. That is the time of the twelve cards, is that

(Testimony of Julius Krakauer.)

right? A. Yes, sir.

Q. And that was before Mr. Wild went up to the Internal Revenue? A. Yes, sir.

Q. You are positive of that?

A. I didn't see him go or anything, but Mr. Callahan did ask me to make up these cards, and told me the purpose of them.

Q. But you are positive the incident occurred prior to Mr. Wild or Mr. Callahan going up to the Internal Revenue?

A. I am quite sure, sir.

Q. No question on that?

A. Well, now, what they did——

Q. "Yes" or "No."

A. I say to you that Mr. Callahan told me the purpose of the cards, so I imagine it must have been before.

Q. I thought you recalled Mr. Wild coming back from——

A. Well, did he come back? That is not the same day. It was Callahan that made this up, probably submitted that to [143] this gentleman, whoever it was, that came down there; and that he and Mr. Callahan came back very much elated with what they had accomplished. In fact, Julius told me they had, that is all.

Mr. Belli: May we take a recess, your Honor?

The Court: We have reached the recess time.

Ladies and gentlemen of the jury, we will adjourn this case and recess until tomorrow morning at ten o'clock, and may I again admonish you not

(Testimony of Julius Krakauer.)

to discuss the case, nor form or express any opinion thereon, until it is finally submitted to you for decision. You may now retire. I have a report from the grand jury. This jury may retire.

(Whereupon an adjournment was taken until tomorrow, Thursday, August 12, 1948, at 10:00 o'clock a.m.) [144]

Thursday, August 12, 1948, 10:00 o'Clock a.m.

The Clerk: United States of America vs. Julius Wild, on trial.

Mr. Campbell: Ready.

The Clerk: You may proceed.

JULIUS KRAKAUER

recalled, previously sworn.

The Clerk: Julius Krakauer, the witness on the stand, has heretofore been sworn.

Cross Examination (Resumed)

Mr. Belli: Q. Mr. Krakauer, have you been able to ascertain your assets at the time you left Mr. Wild?

A. Yes, sir. I have it here.

Q. They were what? A. Here it is.

Q. That's all right, sit down. A. Yes.

Mr. Campbell: May I see that, too?

Mr. Belli: Yes.

The Court: May the records show that the documents were presented by the witness, have been produced voluntarily by him and under no compulsion on my part.

(Testimony of Julius Krakauer.)

Mr. Campbell: And also, may I request that the document [145] that has been produced be marked for identification as the Government Exhibit next in order.

The Court: So ordered.

The Witness: Your Honor—?

The Court: Yes.

The Witness: May I ask this question?

The Court: Yes:

The Witness: I have some substantiating documents and I would like to present them in support of that with the proviso that the people involved, the brokers and banks, be not subpoenaed here.

The Court: Counsel are entitled to interrogate with you. We will see what the examination develops.

The Witness: Yes, sir.

(Documents showing assets for Julius Krakauer, Government Exhibit 11 for identification.)

Mr. Belli: Q. Mr. Krakauer, you hand me a piece of paper here saying your assets on September 25, 1943, were, "Cash—\$2687; Savings Account—\$5000." Where was the savings account?

A. Bank of America.

Q. Which branch?

A. Number 1, Day and Night.

Q. Powell? A. Yes, sir. [146]

Q. "Merrill, Lynch Credit—\$534." Was that a cash or stock credit?

A. That was a cash credit.

(Testimony of Julius Krakauer.)

Q. "Stox on hand, \$1410." And you are going to give us a list of those stocks, as I understand it, and when they were bought? A. Yes.

Q. And defense bonds bought in 1941?

A. Yes.

Q. And Victory Bonds bought in 1942?

A. Yes.

Q. \$3875? A. Yes.

Q. Your assets, as you say here, were \$13,506.64, is that right? A. Yes, sir.

Q. On this amount here, \$506.64, is that right?

A. Yes, sir.

Q. And this amount here, you made out of your \$10 a day with Julius, with what you had saved over and above your living expenses, is that right?

A. No, I should like to say that involved in this amount, of, say, from 1934 on, there must be taken into consideration a sale of a certificate of interest in a South West Irrigation Cotton Association Pool, amounting to some \$600. [147]

Q. Outside of the \$600—

A. Now, wait a minute.

Q. I am sorry. You will correct me any time.

A. I came here with three pieces of jewelry and I had three Swiss watches which were very popular in the twenties, one of which I still have; and one very nice necklace, which I sold to a Mr. Randolph, then doing business upstairs next to the Emporium. He is now on the corner of Stockton and Post in the jewelry business. Mr. Randolph took a fancy to the watch, and paid me a good price for it for

(Testimony of Julius Krakauer.)

his own use. And he took also the necklace off my hands and that amounted to some \$700, the exact amount I cannot state. I also left in my home town a library of considerable volume stored in the El Paso Public Library. It deteriorated because of dampness, and I was compelled to sell it, and I sold it for \$400 and some odd amount. I got a few dividends from the stocks. I also had traded some First National Bank Stock of El Paso, Texas, for some Mexican Agricultural Bonds which I sold partially through W. R. Walker, and Company, of Dallas, and also through Meyer and Company of Mexico City. Although I did not collect the entire amount from Walker because he practically failed, I did collect from Meyer because I had sold those directly under draft, and I got around \$640 out of those two transactions. All of that must be added into that. I cannot give you the exact dates, but it all accumulated within [148] that period which was added to my earnings over and above what I received as salary.

Q. That which you say you want to include in there ran to around \$2000 in rough figures.

A. I haven't added it up.

Q. So the balance would be \$11,500——

A. And added——

Q. Mr. Krakauer, let us get started correctly today, please. Let me finish the question before you answer. Otherwise, it is hard on all of us, and particularly the reporter. Will you bear that in mind?

(Testimony of Julius Krakauer.)

I don't mean to admonish you, but if you will, we will get along a little faster.

A. Yes, I am sorry.

Q. You then earned and saved while you were with Julius, around \$11,500?

A. I wouldn't—I didn't get top salary at first. I wouldn't undertake to say how much I got in salary.

Q. You got less than \$10 a day? A. Yes.

Q. But at any event, you have handed me here a statement of over \$13,000 and we subtract around \$2000 in assets you had or converted, and that leaves about \$11,000, is that right, that you had surplus from your earnings with Julius?

A. No, that is not correct.

Q. You correct me. [149]

A. Because I had some money when I went to work for Julius.

Q. \$700?

A. No, that was in 1932 when I first came here and I did not go to work for Julius until 1936.

Q. How much did you have when you went to work for Julius?

A. I wouldn't undertake to say. I will look that up for you, if you want me to.

Q. Well, you could look that up too. You were planning to give us all your statements today.

Mr. Campbell: I object to that——

Mr. Belli: I withdraw it.

Q. Were these original figures, or did you take those off of something?

(Testimony of Julius Krakauer.)

A. I took those off of something. Here they are.

Q. Could I see what you took those off of?

A. Yes, here is Merrill-Lynch and Company. The reason I brought three of them was because I wanted to bring those along in the regular order.

Q. Mr. Krakauer, if you will, please, just answer the question and let us speed this along.

A. There is September.

Mr. Campbell: Let the records show the witness has handed counsel a document purporting to be a statement from Merrill, Lynch, Pierce Fenner, and Bean, and bearing date of September 24, 1943. [150]

Mr. Belli: Let us put them all in as one exhibit. That would be the easiest thing to do.

Q. Have you any more, and we will put them all in as one exhibit?

A. Here is my bank statement, which I put down in exact amount. I wish to call your attention to the fact that I did not have the September statement. They sometimes fail to send me one, but I have the October statement.

Q. What else have you in your hand?

A. This is another one, but this one is way back in July.

Q. Don't you keep any records in a little book or something? A. What is that?

Mr. Campbell: Just a minute, that is objected to as incompetent, irrelevant, and immaterial.

The Court: Objection overruled.

Mr. Belli: Q. Don't you keep any records in a little book or something? A. No, sir.

(Testimony of Julius Krakauer.)

Q. I understood you to say, or I may be in error on this, that yesterday you were telling us that you could say as to almost any day to what you had exactly.

A. Yes. I just carry my brokerage account from month to month on the brokerage statement that you have there, and then my bank account is, of course, of it self evidence, and that is about all there is. [151]

Q. Where was your safe deposit box?

A. In the Day and Night Bank, sir.

Q. What did you have in the safe deposit box?

A. My bonds.

Q. What else? A. My will.

Q. What else?

A. A burial contract which takes care of me if I kick off.

Q. What else?

A. A note for \$500 loaned to a friend, and that is about all.

Q. How about Swift & Company—weren't you dealing with them?

A. That amount right there was transferred from Swift and Company a month or two before I began doing business with Merrill. That is Swift's stock right there.

Q. Were you playing the market at the same time you were playing the horses in 1941, 1942, and 1943? A. I don't play the market.

Q. I am sorry—"invest"—"play" was an inapt term on my part. Were you investing in the market?

(Testimony of Julius Krakauer.)

A. Only to an extent. It was very limited. That is certainly, as you can see, limited, in the groups of tens.

Q. I see here Socony Oil, Columbia Gas National Dairy, Pennsylvania Railroad, and United States Gas——

A. Yes. [152]

Mr. Belli: We will introduce this in evidence as one exhibit next in order.

Mr. Campbell: To which we object as immaterial and irrelevant. I think counsel's inquiry has defeated itself at this time. It has no materiality in this case.

Mr. Belli: As to whether inquiry has defeated itself, I submit, is ultimately for the Jury to decide.

Mr. Campbell: I withdraw that, but I make the objection the ground incompetent, irrelevant, and immaterial.

The Court: Objection overruled.

(Thereupon United States Exhibit 11 for identification was withdrawn and given the number Defendant Exhibit C in evidence.)

Mr. Belli: Q. Mr. Krakauer, when was the last time that you saw the twelve cards that you spoke of yesterday?

A. After I made them out at the dictation of Mr. Callahan and handed them to him, I never saw them again.

Q. You never saw them again after that?

A. No, sir.

Q. You are positive that Mr. Callahan told you what to put on those cards?

(Testimony of Julius Krakauer.)

A. Unquestionably.

Q. And Mr. Wild never told you what to put on those cards?

A. No, sir. He asked me to see Mr. Callahan and to do this little favor for him. [153]

Q. Was it in 1943 that your finances were in such a state that you could loan Julius—what was it, 7 or 8 thousand dollars?

A. That was in 1940, but that took practically all I had over night, fortunately.

Q. And Julius' finances were so bad at that time that he was broke, wasn't he? Do you know?

Mr. Campbell: Objected to calling for the conclusion of this witness.

The Court: Objection sustained.

Mr. Belli: I withdraw it.

Q. When he came to you and borrowed, was it \$8000?

A. May I be permitted to explain to you——

Q. I would appreciate it if today you would just answer the question, Mr. Krakauer.

The Court: Answer the question, please.

The Witness: Yes, sir.

Mr. Belli: Q. Did you then loan him \$8000?

A. I did not loan him \$8000; I advanced it to him on a phone message from Santa Anita.

Q. But it was \$8000?

A. Not quite \$8000, \$7000.

Q. What did he tell you when he asked you for that money?

(Testimony of Julius Krakauer.)

Mr. Campbell: Objected to as incompetent.

The Court: Objection overruled. [154]

Mr. Campbell: May further state, Your Honor, that it has been shown here that this was a matter in 1945 to the period set forth in the indictment? It could have no bearing on the business here in question for the years 1941, 1942, and 1943. It is not impeachment.

The Court: It may well have, counsel. I cannot interpret at this stage of the evidence the vicissitudes this case may take. I indicated I will allow considerable latitude in examination of this witness, and I think you understand my reasons underlining my ruling.

Mr. Campbell: I do.

The Court: If the materiality does not appear, I will strike it from the record.

Mr. Belli: Q. Will you answer the question, then, please? A. What was the question?

Q. Will you read the question, please?

(Question read.)

A. He phoned me from Santa Anita and told me that until such time as he came here, would I take care of the bets that appeared for payment in the winter book. He had run on the Santa Anita handicap.

Q. Didn't he tell you he was cleaned out by that race that Seabiscuit was in?

A. He told me that he had sold a half interest, or Mr. J. F. Waters, Jimmie Waters had taken over a half interest in any loss or gain in the winter

(Testimony of Julius Krakauer.)

book, and as soon as he came here [155] and saw Mr. Waters and collected from him his share of the loss he would repay me.

Q. And he repaid you when?

A. Not all at one time.

Q. When was the last repayment made to you—in which calendar year, 1941, 1942, or 1943?

A. That debt of his to me varied. In fact, the \$5,000 that appears as my savings was there, because for seven months before I left his employ I began to—well, refuse, I might say, to loan him any further money. It was that \$5,000 that I kept letting Julius have off and on out of my savings account. He would pay me, and if he wanted it again, I would take it out of the savings. [156]

Q. At least, up until the middle of the year of 1943, at least to July, Julius would come to you periodically in 1941, '42 and '43 and borrow money.

A. Not in 1943.

Q. In 1942? A. Yes.

Q. In 1941? A. Yes.

Q. Periodically, then, he would come to you and ask you for money? A. Yes.

Q. And you would be able to help him out?

A. Up to the \$5,000, but I doubt if he ever owed me that much, as much as \$5,000.

Q. And Julius would tell you at that time that he was broke, wouldn't he?

Mr. Campbell: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

(Testimony of Julius Krakauer.)

Mr. Belli: Q. Despite the mirth, you may answer. A. What is that?

Q. Despite the seeming mirth to you, will you please answer the question?

Mr. Campbell: I ask that statement of counsel be stricken from the record. [157]

The Court: Counsel, I see no reason for gratuitous statements on your part. I feel I am allowing you considerable latitude in this examination. Now, proceed.

Mr. Belli: I am sorry, Your Honor. I withdraw that.

Q. Would you answer the question, please.

The Witness: May I have the question, please?

(Question read.)

A. I would presume if he borrowed the money that he would be needing it. But if he was entirely broke, I would not undertake to say.

Q. You didn't take any cards out of this set when you gave them to the Government, did you?

A. I never gave them to the Government. They were summoned by the Government—under summons.

Q. Didn't you go up to the Government first? We don't want to go through all that again, but didn't you go up to the Government first?

A. No, sir, I did not.

Q. Well, they didn't come to you first?

A. Yes, sir, they did.

Q. I understood yesterday that you were the man that went to the Government with respect to these cards.

(Testimony of Julius Krakauer.)

A. I am sorry, I told you I would get you the necessary information. Here are two summons I received from the Government.

Q. Do you know how the Government knew you had these cards? [158] A. Pardon me?

Q. Do you know how the Government knew you had these cards?

A. They didn't know until Feckheimer came to my room with that first summons on February 5; he had phoned me and said he wanted to see me and I told him the job I had, working in the produce district, and part time with C. H. Brown at my old job as hardware man, that it was difficult for me to see him during the working hours, and he kindly consented to come to my room with the statements and asked me if I had any books or records and if I had those cards and I gave them to Mr. Feckheimer.

Mr. Campbell: May the record show the witness has handed to counsel——

Mr. Belli: Counsel, you don't have to let the record show anything. I am going to introduce them.

Mr. Campbell: I will stipulate, then, that they may be received in evidence.

Mr. Belli: Q. This is the 16th of February, 1945? A. Yes.

Q. A summons to appear and produce books and so forth? A. Yes.

Mr. Belli: May we have these received in evidence as Defendant's exhibit next in order.

(Testimony of Julius Krakauer.)

The Court: So ordered. [159]

(Summons to Julius Krakauer was there-upon received in evidence and marked Defendant's Exhibit D.)

Mr. Belli: I may be in error. It was yesterday, and I may have forgotten it overnight, Mr. Krakauer, but I understood you went within a very short time after leaving Mr. Wild's employ to someone in the Government with these cards. We are in error on that, right?

A. If I left that impression, it was certainly wrong because I did not so state or intend to so state.

Q. As a matter of fact, you did not see the Government about these cards until way in 1945.

A. Mr. Peckheimer came to my room at my request because I could not see him during business hours and he examined me there in my room, No. 414 at 835 O'Farrell.

Q. And you had the cards in your room at the time?

A. I did, sir, and they were all there at the time.

Q. You were going to look up some memorandum that you had in writing regarding that transaction you told us about.

A. I was very sure I had those, Mr. Belli, but you were pressing me for an exact date and I knew I had those summons and I didn't care to answer, when I felt sure I had that information which I could bring you this morning.

(Testimony of Julius Krakauer.)

Q. Well, Mr. Krakauer, this is not in your handwriting? A. No, sir.

Q. Where is the one that is in your handwriting? [160]

Mr. Campbell: Just a minute. I object as assuming a fact not in evidence. He did not say a memorandum was in his hands.

The Court: Sustained.

Mr. Belli: Q. Didn't you have a memorandum in your handwriting?

A. No, I didn't say that.

Q. This is February 16, 1945, this is what you had reference to? A. Yes.

Q. And you left Mr. Wild, as you say, in September of what, 1943?

A. Yes, September 1943.

Q. This, by the way, is the memorandum that you prepared for Mr. Wild to sign, is it not? Isn't that the memorandum you prepared for Mr. Wild or his agents to sign, Mr. Krakauer? (Showing document to witness.)

A. I don't think I prepared this, Mr. Belli. Now, I may be mistaken as to that, but I had no recollection of preparing it. I don't think I did. I wouldn't say positively, though.

Mr. Campbell: May the document be marked for identification?

The Court: So ordered.

Mr. Belli: Q. You have never seen this before?

A. I tell you I might have, but I really don't think so. I [161] wouldn't say positively one way

(Testimony of Julius Krakauer.)

or the other. I don't think I prepared it. I would have prepared it on my own typewriter and that is not my typing.

Q. Certainly you would have a recollection about the events.

A. I don't think I prepared it, sir. I don't recollect it. I am sure of that.

Mr. Belli: We offer this as our next exhibit for identification.

The Court: So ordered.

(Memorandum in question was thereupon marked Defendant's Exhibit E.)

Mr. Belli: Q. If I were to show you the United Airlines ticket invoices for 1941 and 1942, giving the dates that Mr. Wild was out of town, would that refresh your memory as to the number of times that he was out of town on business?

A. Yes, naturally, because I knew he flew down there.

Q. You also knew that he bet quite heavily when he was down there, didn't you?

Mr. Campbell: Objected to as calling for the conclusion of the witness.

The Court: Sustained.

Mr. Belli: Q. Well, do you know that?

Mr. Campbell: Now, just a minute. Unless it is established that the witness was present, he could have no knowledge other than by hearsay. I object to the question. [162]

The Court: Well, go ahead.

Mr. Belli: Q. Did you hear that directly from Julius when he returned?

(Testimony of Julius Krakauer.)

Mr. Campbell: I make the objection that is incompetent and it is a self-serving declaration.

The Court: Objection overruled.

The Witness: What is the question?

Mr. Belli: Q. Did you hear that directly from Julius when he returned from the South or these other tracks that he had bet and lost?

A. Sometimes he told me; sometimes I heard it in the room, such rumors and talk one hears in any establishment.

Q. Don't you know, as vernacular goes, he was "making book" when he would go down there?

A. Yes, I knew that. At least he told me that; I didn't see that.

Q. Those business transactions did not appear on these cards, did they?

A. No, they did not.

Q. By the way, did any of this transportation expense appear on these cards? A. No, sir.

Q. Here is 12 times in 1941 and 22 times in 1942.

Mr. Campbell: Now, just a minute. I object to that statement of counsel. That does not appear on the document he [163] refers to.

Mr. Belli: Well, my question should be more properly to you, Mr. Krakauer. I will withdraw my remark: It is gratuitous and I should not have made it.

Q. Mr. Krakauer, if you look at that sheet that will indicate the number of fare trips—22, I counted them. You don't have to take my word. You can count them, 22 here and 12 here.

(Testimony of Julius Krakauer.)

Mr. Campbell: Again, I object to the characterization of the document. I submit it to the Court.

Mr. Belli: Let me introduce the document not presently, but later. Based on those figures, does that jog your memory as to the number of times Julius was out of the business here in 1941 and 1942? A. He would only go over Sunday.

Q. Over the weekend?

A. Over the weekend, and come back usually Monday, is my recollection. I wouldn't say definitely Monday every week. But he did not operate Sunday.

Q. Bob Hughes would go down with him, wouldn't he?

A. No, not unless it was times I didn't know about. But it was not a custom. It was not a custom.

Q. Did Mr. Hughes help Julius on the bets that were made outside of the room, that is, the bets that had been phoned in, or the so-called runners that would come in from the various clubs? [164]

A. Only to the extent of submitting them to him whether or not he would accept them.

Q. You didn't have anything to do with those checks?

A. No, sir, except as they came to my station and offered them, and they were in excess amount, I would ask if they were acceptable or not which was a rule, of course, naturally.

Q. But isn't it fair to say that 90 per cent of those bets went directly into Julius and did not come through you?

(Testimony of Julius Krakauer.)

A. The ones over the phone probably did, but there were comparatively few of those, I believe.

Q. You say there were comparatively few of those. How about in size, weren't those the big bets, the \$100 and \$200 bets, or do you know?

A. I wouldn't want to say definitely. Mr. Wild had some bettors that he gave phone privileges to. I should not like to mention their names.

Q. You are not being asked to mention names, sir.

A. O.K.

Mr. Belli: That is all of this witness, Your Honor.

The Court: Any redirect examination, Mr. Campbell?

Mr. Campbell: Yes, Your Honor.

Mr. Belli: May we mark this and by "this" I refer to United Airlines letter with list of trips?

Mr. Campbell: And I made the objection, Your Honor, that no proper foundation has been laid for the admission of the [165] document in evidence.

The Court: It may be marked solely for identification.

(United Airlines letter in question was thereupon marked Defendant's Exhibit F for identification.)

Redirect Examination

Mr. Campbell: Q. Mr. Krakauer, during cross examination counsel asked you in effect what knowledge you may have had concerning losses of Mr. Wild in bets at the track and showed you certain

(Testimony of Julius Krakauer.)

cards which were marked Defendant's Exhibit B for identification. He referred to various amounts on them. Will you examine these, and particularly the dates on those cards and state in what year, or to what year those bets were made according to the card? I am referring, for the purpose of the record, to Defendant's Exhibit B for identification.

A. They were all made—let me look at the last three. The others were all 1944. I don't know how they mark these down here in Mexico. But this batch is 1944.

Q. In the first group you examined, the dates are all December 1944, is that correct, sir?

A. Yes, but these—I don't know how they mark these.

Q. The first group are all Hollywood Park pari-mutuel tickets.

A. I will have to look at those.

Q. The date here, and I call your attention to this, that the years here involved are 1941, '42 and '43.

A. Hollywood Park? [166]

Q. Yes, and all in December of 1944.

A. Yes.

Mr. Campbell: I do not know how they mark these down here.

Q. There are in the group three tickets which appear to be Hippodrome de Tijuana, the Mexican track, and no dates appear on those three.

A. That's right.

Q. The dates which appear here, December 1944, were all a year after you had left Mr. Wild's employ, is that correct?

(Testimony of Julius Krakauer.)

A. Yes, just a year and some months.

Q. Now, Mr. Krakauer, did you ever steal, purloin or take from Mr. Wild one cent other than the salary which you received in your employment there?

Mr. Belli: That question is objected to as leading and suggestive.

The Court: You might add to the "one cent," or "any other sum or sums."

Mr. Campbell: Yes, any other sum or sums.

The Court: The objection is overruled.

The Witness: A. Absolutely not—not one penny.

Mr. Campbell: Q. Did you ever receive or take any of the money referred to as sleeper bets here?

A. Absolutely not one penny.

Q. You stated, I believe, with respect to these cards that the [167] cash was balanced nightly, is that correct, sir?

A. I had to take it to the bank and account for it, so I balanced it every night, sir.

Q. And that amount of money had to be on hand or was on hand at the beginning of the following day's business.

A. Yes, sir.

Q. And that was always correct to the cent, the amount on hand, as shown by the cards?

A. If it was not, there was some explanation necessary, and as far as I know, that was always true.

Q. Now, counsel has questioned you concerning loans made to Mr. Wild and some phone calls from

(Testimony of Julius Krakauer.)

Santa Anita, I believe, wherein he requested you to take care of certain obligations, is that correct?

A. Yes.

Q. In what year did that occur, Mr. Krakauer?

A. 1940.

Q. Counsel asked you something to the effect that if Wild told you at that time that he was cleaned out—what was said in that regard?

A. He did not say that. He wanted money to take care of the bets that would be presented before he could possibly return to his room, that the bets he had taken in his winter book, because he didn't want anybody to wait.

Q. And you say you advanced about \$5,000 at that time in 1940? [168]

A. Oh, around \$7,000. I wouldn't want to say the exact sum.

Q. That sum was repaid to you during 1941 and 1942?

A. Well, in fact, immediately upon his return and his receiving some monies from Mr. Waters, at least he said he got them from Mr. Waters, he paid me a considerable part of it.

Q. That was still in the year 1940?

A. That was still in the year 1940.

Q. Let us go back a bit. You have been questioned here as to the assets which you had when you came to California in 1932, and you referred to accumulation of the money which you have, and testified as to certain assets which you had disposed of. Did you have those assets at the time you went

(Testimony of Julius Krakauer.)

to work for Mr. Wild, that is to say, the irrigation pool interest?

A. All except the one that I had sold previously.

Q. What was that?

A. That was my library, because it was deteriorating and Mrs. Sullivan, a very good friend of mine, wrote me that I better dispose of it.

Q. You say your initial \$500 was advanced in around 1932, was it, or what year was it that you made the initial advance, as near as you recall?

A. I think it was nearer 1934 because it was when Mr. Wild was in Canada. I can identify it only in that way.

Q. When did you come to California?

A. In 1932. [169]

Q. Were you employed from that time until you went to work for Mr. Wild in 1936?

A. I always managed—times were tough. There was a depression——

Q. Were you employed then?

A. I was always able to find a little something to do. Part time bookkeeping was one of the things I could do, and I would do work at nights—anything to get ahead.

Q. You were continuously employed?

A. Yes, I was—sometimes part time; but always so I could eat.

Q. You didn't have any dependents, or did you have any dependents in 1932?—and up through the period you worked for Mr. Wild?

A. I have two boys, but fortunately they have not ever been dependent on me.

(Testimony of Julius Krakauer.)

Q. They are grown sons?

A. They are grown sons and one is still in the Army.

Q. Were you supporting anybody for the period you were working with Mr. Wild? A. No.

Q. What was your standard of living?

A. Very simple. I neither drink nor smoke. My tastes are not extravagant and I do a little entertaining. If friends come to town, I take them to dinner. My only extravagance, perhaps, is music and opera and reading, but that I get from the library. [170] So I live, not frugally, but comfortably, and I have been in the hotel where I presently reside for nine years. It has been a home to me.

Q. Have you consistently saved throughout your mature life?

A. When I came here I had to. I was getting along in years. I will be 69 next week.

Q. During the time you have been in California, have you consistently saved money?

A. I always have, because I had to.

Q. Did you continue to save money throughout the period of time you worked for Mr. Wild?

A. Yes, sir.

Q. You were receiving, as I understood your answer to Mr. Belli's questions, some income other than from Mr. Wild by way of dividends, is that correct? A. Yes.

Q. Did you also receive interest during that period?

(Testimony of Julius Krakauer.)

A. From Mr. Wild on the loans I made him.

Q. What would those sums go into, your savings?

A. Well, yes, they went into my commercial and then into savings—the \$5,000 did.

Q. I mean, did you save that money?

A. I saved that money. In fact, I saved most of what I made except what I needed for living expenses or entertainment when my friends from Texas came. [171]

Q. How much would your living expenses run to, approximately? Put it on any basis you can estimate it, daily, weekly, monthly, or annually.

A. In those days things were cheaper. I should say I lived probably on a dollar a day.

Q. Would that include your rent?

A. Yes, my rent was very reasonable.

Q. What was the rent you were paying?

A. \$23.50 a month for a room and bath.

Q. When you say a dollar a day, does that include rent?

A. No, let us say a dollar and a half a day.

Q. What were your expenses during the period here in question, 1941, '42 and '43? What would they average?

A. Maybe \$100 a month. I don't believe they would run that high.

Q. Was that your entire living cost, \$100 a month during the period in question?

A. I believe that would cover it. That is pretty hard to say.

(Testimony of Julius Krakauer.)

Q. I understand——

A. But I think that is fairly stated. I don't want to get too definite.

Q. Now, what was your rate of compensation during the period you worked for Mr. Wild?

A. Well, I should say, taking——

Q. No, give us the amount. What did you start at per day? [172]

A. \$6.00, I believe.

Q. How long did that continue? When did you get a raise?

A. Maybe a year or a year and a half.

Q. That would be in 1937 or '38? A. Yes.

Q. What did the compensation then become?

A. \$8.00—\$6.00—no, \$8.00, I should say.

Q. Were you subsequently raised to \$10?

A. Yes, but that was only during the last two years. I wouldn't want to be too definite on that year, sir.

Q. Were those wages based on a six-day week?

A. Yes.

Q. Something was said about bonus. In addition to the daily rate, did you also receive a bonus from Mr. Wild?

A. Yes, on any single day winning over \$100 you got a bonus.

Q. How much bonus did you get?

A. \$1 or \$2.

Q. Per day? A. Yes.

Q. When that ran over that amount?

A. Yes.

(Testimony of Julius Krakauer.)

Q. How often would that occur, if you recall?

A. I wouldn't want to say, because——

Q. Was that a frequent occurrence?

A. It was fairly frequent. [173]

Q. Let us go back a moment, Mr. Krakauer: As I understood your testimony, while you were still working, some investigation was begun by some Internal Revenue agent, is that correct, sir?

A. Yes, sir.

Q. What year was that?

A. Early part of 1943.

Q. That is while you were still employed there?

A. Yes, sir.

Q. While you were still maintaining these cards?

A. Yes, sir.

Q. And that investigation, at least the time you were there, was concerned with the year 1941, is that correct, sir?

A. Yes, sir.

Q. During the period of time that you were still employed there, did you have any communication or conversation with any Internal Revenue agent?

A. I did not.

Q. Was the first conversation that you had with an Internal Revenue agent the time when they took these cards from the room?

A. Mr. Feckheimer was the agent.

Q. All right. As to this bonus that was paid to employees, when the take or profit would run over \$100, was that included in the expenses shown on these cards? [174]

A. That's right.

(Testimony of Julius Krakauer.)

Q. So that is not in addition to the expenses set forth here? A. No.

Q. So I understand the testimony——

A. (Interrupting): Mr. Campbell, may I correct that to this extent?

Q. Yes.

A. Sometimes Jules would pay that out of his own pocket and it would not appear on the card. I want to be fair and honest about this.

Q. Well, as these cards stand now, and as they were made up at the end of the week, were such bonuses as he paid out of his pocket taken in here?

A. Not all of them.

Q. Well, how often were they not taken in here?

A. That would be hard to say, but I couldn't say positively that they were all on there. That would not be true.

Q. Well, can you give us your best recollection as to how often that occurred when they were taken in on the cards?

A. Maybe 50 per cent of the time.

Q. Who received these bonuses, according to your best recollection?

A. Everybody in the room.

Q. Everybody in the room would receive an equal amount?

A. At one time not an equal amount; but later on, everybody [175] in the room got an equal amount.

Q. During '41, '42 and '43?

A. I think they all received an equal amount.

(Testimony of Julius Krakauer.)

That is awfully hard to answer, too, but I think they all received the same amount.

Q. How much was received by each individual? How much did you get?

A. Anywhere from a dollar to two dollars.

Q. Anywhere from a dollar to two dollars?

A. Yes.

Q. Never over two dollars?

A. It might have run over two dollars sometimes.

Q. Well, do you recall it ever running over two dollars? A. Yes, I do.

Q. On how many occasions?

A. Not a great many, but we also, of course, had the holiday little distributions and things of that kind that occur in every establishment.

Q. I am referring to the bonus payments.

A. I don't think——

Q. How often can you state during the years 1941, '42 and '43 were those omitted from the cards?

A. Perhaps 50 per cent of the time. That is difficult to say because, as I say, Jules would sometimes decide if it was not quite the \$100 he would pass it out anyway. He was generous [176] in that regard.

Q. And that would only take place where the profit for the day would exceed \$100, is that correct? A. Yes.

Mr. Campbell: That's all.

(Testimony of Julius Krakauer.)

Recross Examination

Mr. Belli: Q. Mr. Krakauer, what interest was Julius charged by you? A. What is that?

Q. What interest did you charge your good friend Julius?

A. I think Jules will confirm this, that every now and then he handed me some money and there was no stipulated interest, and very often I did not even have a note for the loan, and he would pass me out some money and say, "This is on interest account." It was not stipulated. It was simply an arrangement between friends.

Q. The interest didn't appear on these cards there? A. No, it did not.

Q. With reference to these activities of yours that you mentioned that you had no vice, you did not smoke or drink, but you did go to the library during the time you were living so frugally——

A. I always have carried a library card since I came here.

Q. You lived on about a dollar and a half a day?

A. I think that is about right. [177]

Q. How were you on the races? Did you make any money?

A. No, not a great deal. If I lost, it was not a great deal, or if I won it was not a great deal. It is pretty hard to win at the races. But I did not lose much.

Q. How often did you bet?

A. If I had a plan or system that was going and

(Testimony of Julius Krakauer.)

if a horse did not appear that day, I had will power enough to resist and I did not bet.

Q. How often would you bet—two or three times a week?

A. Possibly, sometimes every day, if this fitted into my plan, but a very small amount.

Q. And apparently you were one of those individuals who broke even on the races?

A. I would say so.

Q. Wouldn't you say in that regard you were more fortunate than your employer, Julius?

Mr. Campbell: That is objected to as calling for the conclusion and opinion of the witness and argumentative.

The Court: Sustained.

Mr. Belli: Q. You know, as a matter of common knowledge, that Julius didn't break even on his betting, don't you?

Mr. Campbell: Objected to as incompetent.

The Court: Sustained.

Mr. Belli: May I try once more this way, and will you withhold your answer until we find out if it is permissible for [178] you to answer the question:

Q. Do you know of your own knowledge if Jules was successful in betting on his own account?

A. He was not successful.

Q. That is true? A. That is true.

Q. So it is true that you were more successful on the number of wins you had than your employer.

Mr. Campbell: That is objected to as a conclusion.

(Testimony of Julius Krakauer.)

The Court: Sustained.

Mr. Belli: That's all. Thank you very much.

Redirect Examination

Mr. Campbell: Q. You say of your own knowledge—were you present at the tracks when Julius would bet? A. No, I was not.

Mr. Belli: I object to that as cross examination of his own witness.

The Court: Objection overruled.

The Witness: I was not.

Mr. Campbell: Q. Were you present with Julius when he placed bets at the track?

A. No, sir.

Q. Were you present with Julius when he collected on any bet that he may have won?

A. No, sir, except when he made them in the room when his [179] horses ran. I knew the bets he made on his own horses, his own stable.

Q. When you say of your own knowledge he was not successful in his betting, are you referring then to the number of bets which he made in the room itself? A. Mostly.

Q. You are not referring to bets he may have made at the track?

A. No, sir, I didn't know about it.

Mr. Campbell: That's all.

Mr. Belli: That's all.

The Court: One question:

Q. During the years 1941, 1942 and 1943, as I understand your testimony you kept the immediate accounts in the establishment?

(Testimony of Julius Krakauer.)

A. That's correct, sir.

Q. As exemplified in those tickets?

A. That's correct.

Q. And that formula, as set forth therein, of accounting is one which is more or less uniform in establishments?

A. I don't know, sir; I just devised it myself.

Q. In other words, you created that pattern of account? A. Yes.

Q. To your knowledge, did the defendant have any person or firm or individual other than you who kept his personal accounts during that period of time? A. Not to my personal knowledge.

Q. Did he ever indicate to you that he desired you to keep his personal accounts or maintain them if he had any?

A. No, I didn't keep his personal accounts.

Q. Well, to your knowledge, did he have any person who aided or assisted him in keeping or maintaining his personal accounts?

A. Not to my knowledge.

Q. So, to your knowledge, he had only one account as set forth in the tickets?

A. That's correct, to my personal knowledge, that is.

The Court: All right.

Mr. Belli: May I ask a question or two, Your Honor?

The Court: Yes.

(Testimony of Julius Krakauer.)

Re-Cross-Examination

Mr. Belli: Q. Mr. Krakauer, did you ever ask him to give you an accounting of any of these expenses like the United Air Lines expense or traveling expenses or his betting expenses so you could include those in the cards?

A. I never did ask him.

Q. As a matter of fact, speaking of Julius, the way he ran the business on money matters and on his accounting, you would characterize that as very sloppy, wouldn't you?

Mr. Campbell: That's objected to, Your Honor.

The Court: Sustained. [181]

Mr. Belli: Q. Was he careful about his accounting of money matters?

Mr. Campbell: That's objected to as calling for the conclusion of this witness.

The Court: Sustained.

Mr. Belli: How did he keep his money matters, personal accounts, do you know?

Mr. Campbell: We object to that, Your Honor, he already stated that he did not know.

The Court: All right, he can answer the question again.

The Witness: I didn't know how he kept that. A good deal of money was kept on his person, I know that.

Mr. Belli: Q. Was it necessary for him to keep a good deal of money on his person to pay off debts? Isn't that one of the accoutrements of a book maker to have large sums of money on his person.

(Testimony of Julius Krakauer.)

A. No, not necessarily. But in those days even I always kept a few hundred dollars to help out.

Q. Why?

A. Because very often he would bet on those cinches, and sometimes I would have to have the cash available to build up, or carry on for him, and I gave him a complete accounting of it, and the cards which show it, so I was protected when he would come back.

Q. And when he came back from those cinches, there was no [182] accounting of what money he had spent or had in his pocket, was there?

A. No, I wouldn't know that.

Mr. Belli: That is all.

Redirect Examination

Mr. Campbell: Q. You say he carried considerable sums of money on his person. Did you ever have occasion to ascertain how much he carried on his person? A. I did, sir.

Q. When was that?

A. On an occasion——

Q. What year?

A. Probably 1922. I went into the washroom in the establishment just before closing things up, which I usually did, and on the ledge I found his wallet and I picked it up and he usually had lunch or dinner in the Dixie Dixon next door, and I counted the money and there was \$2200 and I went in and he was sitting there with some friends having some coffee and I said, "Jules, are you missing anything?" He immediately slapped his thigh, and

(Testimony of Julius Krakauer.)

he said, 'My wallet!' I said, 'Here it is.' I said, 'Before I give it to you, Jules, how much money is in there,' because I wanted to protect myself and I didn't want any responsibility if any was missing. He said, '\$2100 or \$2200.' I said, 'There is \$2200, yes.' And gave him the wallet, and he always—— [183]

Mr. Campbell: I don't want any heresay, Mr. Krakauer. That is all.

Recross Examination

Mr. Belli: Q. You asked him how much money was in the wallet before you gave it to him?

A. Yes.

Q. And you counted it before you left the washroom?

A. I counted it before I left the washroom and checked with him so he would not get the figure up. Not that I distrusted him, but I found the man's wallet and I was justified in asking him how much money was in there, because somebody else might have filched it, or there might have been 2000 there. But he told me there was \$2100 or \$2200.

Mr. Belli: That is all. Thank you.

Mr. Campbell: That is all.

The Court: Ladies and gentlemen of the jury, you now retire for the morning recess. Again I admonish you not to discuss this case among yourselves nor suffer any person to converse with you on any subject of the trial, and not to form or

(Testimony of Julius Krakauer.)

express any opinion thereon until the case is finally submitted to you.

(Recess.) [184]

The Court: You may proceed.

Mr. Campbell: Mr. Lippert.

CHESTER J. LIPPERT,

called for the Government; sworn.

The Clerk: Q. Will you state your full name, sir? A. Chester J. Lippert.

Direct Examination

Mr. Campbell: Q. What is your business or occupation, Mr. Lippert?

A. I am an Internal Revenue agent.

Q. Attached to the Agent in Charge for this District, in San Francisco?

A. That's right, sir.

Q. And how long have you been a revenue agent? A. Six years.

Q. And as a revenue agent, is it one of your duties to examine and audit returns filed by individual taxpayers, corporations, partnerships, firms, together with substantiating books and records for the purpose of verifying the amounts returned for taxes? A. It is.

Q. Calling your attention first to Government's Exhibit 1, the return of Julius Wild for the calendar year 1941 (handing document to the witness), I will ask you if, in connection [185] with your official duties as a revenue agent you had occasion

(Testimony of Chester J. Lippert.)

to examine that return for the purpose of verification? A. Yes, I did.

Q. Will you state when you were given that assignment, Mr. Lippert?

A. I had the case, and I wrote a letter to the taxpayer asking him to bring in his books and records, on January 23, 1943.

Q. January 23, 1943? A. 1943, yes.

Q. By "The Taxpayer," do you refer to Julius Wild? A. That's right.

Q. Now, subsequently, did the taxpayer or his representative appear at your office?

A. Yes, sir.

Q. And who appeared there?

A. A Mr. Callahan.

Q. Do you recall his first name?

A. No, I don't.

Q. Was that a R. F. Callahan?

A. He was the taxpayer's representative.

Q. I see. Was a power to represent presented at that time? A. Yes, sir.

Q. All right. Now, on the occasion of your first meeting with Mr. Callahan were any books or records presented in substantiation [186] of the 1941 return?

A. There were a few books and records presented, but they were inadequate, and I asked him to bring in further books and records.

Q. Do you recall what he brought on the first occasion?

A. Just some papers in connection with his deductions.

(Testimony of Chester J. Lippert.)

Q. Do you recall what they were at this time?

A. No, I don't.

Q. Were they left with you? A. No.

Q. As I understand you, you called for further records, is that correct? A. That's right.

Q. Now, was there a second meeting with Mr. Callahan, or with Mr. Callahan and Mr. Wild?

A. Yes, sir.

Q. With whom? A. With Mr. Callahan.

Q. And do you recall when that was?

A. Just a few days after the first meeting.

Q. That would be the early part of 1943?

A. That's right.

Q. And was anything which purported to be records submitted to you on that occasion?

A. Yes. [187]

Q. What did they consist of?

A. Well, some cards, purported to be his income, and other records in support of his deductions on traveling expense.

Q. Now, referring to these cards, were the records left with you on that occasion, or examined and taken away.

A. No; they were examined and taken away.

Q. Taken away by Mr. Callahan, is that correct? A. That's right.

Q. Do you recall how many cards there were?

A. I believe there was a card for each month.

Q. You were only examining with reference to 1941? A. That's right.

Q. So that there were 12 cards presented to you, as you recall them? A. Yes.

(Testimony of Chester J. Lippert.)

Q. Do you recall what those cards showed or purported to show?

A. Well, his income for the year 1941.

Q. Well, what was the nature of the figures set forth on those cards, if you recall? Was there a single item, or more than one item?

A. Oh, there was more than one item.

Q. Do you recall what they purported to be?

A. Well, just representing his gross take from the—

Q. Gross take. Were expenses also set up there?

A. I don't recall. [188]

Q. I see. Would you recognize those cards if you saw them again?

A. I believe I would, yes.

Q. You do recall definitely that there were 12 cards, one for each month? A. Yes.

Q. And did you compare those cards with the return filed by Mr. Wild for the calendar year 1941—that is to say, the figures contained on his 1941 return? A. Yes, I did.

Q. And did they purport, or did they support the figures set forth on this 1941 return (handing document to the witness)? A. They did.

Q. I am going to show you Government's Exhibit 7, which purports to be some 44, I believe, cards—52 less 8—some 44 cards (handing cards to the witness). And I will ask you if those were the cards that were submitted to you? You will observe that there is writing both on the front and on the back, and that they purport to be weekly cards. A. Yes, I think I recall those cards.

(Testimony of Chester J. Lippert.)

Q. Were those cards submitted to you?

A. Yes.

Q. Well, then, it is your testimony that some 44 cards were submitted to you, rather than one for each month? A. Some 44 cards? [189]

Q. Yes. You stated that some 12 cards were given to you to substantiate the return.

A. Yes.

Q. I am asking you if these were the cards, which comprise some 44 cards. If you will look at them. Those were submitted to you by Mr. Callahan, were they?

Mr. Belli: I think, counsel, hasn't he already answered? But if there is some confusion, as there apparently is, I have no objection if you lead him. If he is confused on it, I don't have any objection to that. I don't think he understands.

Mr. Campbell: Q. Have you ever seen these particular cards, Mr. Lippert? As I understood you, some 12 cards, one for each month, were handed to you. These purport to be cards for each week of 1941.

A. I believe that the cards submitted to me were the 12 monthly cards, not these cards.

Q. They were not these cards? A. No.

Q. And you do recall definitely, however, that when you checked the cards that were handed to you, that they substantiated the figures set forth in the 1941 return, is that right?

A. Yes, that's right.

Q. And they substantiated, did they, such figures, or did you [190] add them to see whether

(Testimony of Chester J. Lippert.)

they substantiated the figures of total receipts, \$19,-758? A. Yes, I added the cards up.

Q. And they did substantiate that amount?

A. They did substantiate the figures, yes, sir.

Q. And did you, on that occasion—strike that.

After your completion of the examination of the cards, have you had anything further to do with this case? A. No, nothing at all.

Q. And have you, from that day to this, seen the 12 cards which were submitted to you?

A. No, I have not.

Q. You are definite, now, that these cards were not the cards that were submitted to you?

A. That's right, I am.

Mr. Campbell: You may cross examine.

Cross Examination

Mr. Belli: Q. Did Mr. Callahan say the cards were made up by a Mr. Krakauer?

A. He didn't say.

Q. You knew Mr. Krakauer about this time, didn't you? A. I didn't know Mr. Krakauer.

Q. When did you first meet Mr. Krakauer?

A. I didn't meet Mr. Krakauer.

Q. You have never met him? [191]

A. Never met him.

Q. When the cards were brought to you, these 12 cards, was any explanation made with reference to expenses coming out of the business, or airplane travel, and all the rest of that?

A. Yes. I was questioning him in regards to his traveling expenses in connection with these trips to Caliente.

(Testimony of Chester J. Lippert.)

Q. Yes. And were any vouchers submitted to you to support his contention that he had been to Caliente, had some expense in connection with that?

A. No, not that I can recall. As my report shows, I disallowed some traveling expenses as being unsubstantiated.

Q. Then some of these expenses that weren't substantiated, they then paid a tax on that, did they? A. Yes, they did.

Q. On \$83.00, or something like that?

A. That's right.

Mr. Campbell: I will stipulate to \$83.00—fifty-three—\$83.53.

Mr. Belli: Thank you.

That is all.

Mr. Campbell: That is all, Mr. Lippert.

(Witness excused.)

Mr. Campbell: Mr. Burkett.

WILLIAM A. BURKETT, [192]

called for the Government; sworn.

The Clerk: Q. Will you state your full name, sir? A. William A. Burkett.

Direct Examination

Mr. Campbell: Q. What is your business or occupation, Mr. Burkett?

A. Special Agent, Intelligence Unit, United States Treasury.

Q. And are you attached to the office of the Intelligence Unit here in San Francisco?

(Testimony of William A. Burkett.)

A. Yes, sir.

Q. How long have you been a special agent?

A. During the past three years, sir.

Q. As a special agent, it is your duty to investigate cases where there have been allegations of improper returns filed on behalf of taxpayers?

A. Yes.

Q. And were you assigned to this particular case, that is, the investigation of Julius Wild?

A. Yes.

Q. When did you receive that assignment?

A. January 21, 1946.

Q. Now, Mr. Burkett, will you recount briefly your education and experience since leaving college?

A. I graduated in law. I have a public accounting certificate in the State of California as a licensed public accountant. [193]

I was regional investigation chief for the Pacific Coast area, law enforcement, prior to the war.

I volunteered—

Q. For what agency?

A. War Production Board.

Q. Yes.

A. I volunteered for the armed services and was a staff officer in the Intelligence Unit, United States Coast Guard.

I returned to my position as regional enforcement chief, and I was likewise, prior to going with the War Production Board as law enforcement chief, with the bank, in the accounting de-

(Testimony of William A. Burkett.)

partment. Likewise, I was in the general controller's of the Company Protective Service.

Q. You had further public accounting experience? A. Yes.

Q. You say you are a licensed public accountant? A. Yes, sir.

Q. And you said you had further public accounting experience? A. Yes, sir.

Q. With what firm?

A. I was assistant to the secretary-treasurer of the Poultry Producers of Central California.

Q. For what period of time?

A. For the year '45 to '46.

Q. Since that time you have been with the Intelligence Unit? [194] A. Yes, sir.

Q. Now, Mr. Burkett, in connection with your investigation of this case, have you examined Government's Exhibits 7, 8, and 9, which have been identified here as the record cards setting forth the receipts, expenses, and other disbursements of the business of this defendant, Julius Wild, of 1182 Market Street in this City (handing documents to the witness)? A. I have, sir.

Q. Your attention is directed to the fact that on each of these cards, which purport to be weekly cards, there is set forth the gross amount bet for the week by customers of the establishment. I will ask you if you have computed for each of the years in question the total amount monthly shown by those cards as having been bet by customers with the defendant in the defendant's place of business

(Testimony of William A. Burkett.)

—that is to say, Julius Wild's place of business?

A. I have.

Q. Will you state with regard to the year 1941 what your examination showed to be the gross receipts for the month of January?

A. January, the gross receipts received by Julius Wild's place of business was \$49,492.

Q. For February of 1941? A. \$45,783.

Q. Now, will you proceed and give the same information on each month?

A. March, \$41,897.50.

The place was closed during April and May.

Q. There are no cards for April and May?

A. That's right, sir.

Q. Will you proceed?

A. June, \$27,350.

July, \$41,547.50.

August, \$56,911.

September, \$42,425.50.

October, \$28,622.

November, \$33,364.50.

December, \$16,708.50.

Q. Now, what is the total amount as found for the year 1941, as bet by customers in this establishment?

A. For the ten months of 1941 the total bets placed by customers was \$386,101.50.

Q. Now, did you make a similar examination with respect to the amounts bet by customers in the year 1942 as reflected by Government's Exhibit 8, the records of the defendant?

(Testimony of William A. Burkett.)

A. Yes, sir.

Q. Will you state month by month the amount as shown by those records as having been received in bets from customers?

A. January, \$39,633.50. [196]

February, \$38,329.

March, \$44,182.

April, \$35,923.

May, \$64,795.50.

June, \$56,903.50.

July, \$58,331.50.

August, \$72,381.

September, \$70,550.

October, \$38,684.

November, \$28,260.

December, \$21,537.

Q. What was the total for the year 1942?

A. Total, \$569,493.50.

Q. Now, did you make a similar examination with respect to the gross amount of bets received from customers by the defendant as shown, as reflected in the cards, Government's Exhibit 9, for the months there reflected of 1943?

A. Yes, sir.

Q. Now, will you state that month by month?

A. January, \$38,781.50.

February, \$31,003.

March, \$64,478.

April, \$43,263.

May, \$76,048.

June, \$69,052. [197]

(Testimony of William A. Burkett.)

July, \$35,765.

August, \$81,718.

September, \$82,603.

Q. Now, is that the last card that was available?

A. Yes, sir; that would be for the nine months of 1943.

Q. And what is the total amount, as reflected in your computation, that was received for the nine months for which the records are available?

A. \$522,711.50.

Q. And have you computed the total of the 10 months of '41, the 12 months of '42, and the 9 months available as of 1943, as to total bets reflected by the records, Government's Exhibits 7, 8 and 9, by the defendant, for that 31-month period?

A. Yes, sir.

Q. And what is that total figure?

A. \$1,478,306.50.

Q. And have you prepared or caused to be prepared a schedule setting forth the figures to which you have just testified (handing document to the witness)?

A. Yes, sir.

Q. And is that the document which I hand you?

A. Yes, sir.

Q. And this reflects or sets forth the same figures which you have just testified to? [198]

A. Yes, sir.

Mr. Campbell: This will be offered in evidence.

Mr. Belli: No objection. That is a recapitulation?

Mr. Campbell: A recapitulation.

(Testimony of William A. Burkett.)

The Court: It may be marked appropriately Government's Exhibit next in order.

The Clerk: Government's Exhibit 12 in evidence.

(The recapitulation referred to was received in evidence and marked U. S. Exhibit No. 12.)

Mr. Campbell: Q. I further call your attention, Mr. Burkett, to the fact that each of these cards purports to set forth certain further information, namely, the amounts paid out to customers, the various expenses and drawings as set forth on these cards. Have you examined each of these cards, and for each of the years here in question, for the purpose of ascertaining the net amount of profit for each of the years and each of the periods set forth by those cards by the defendant?

A. I have, sir.

Q. And in making that computation, have you allowed all expenses of whatever nature that are set forth on those cards?

A. Yes, all expenses.

Q. So that the figures which you have are those which are reflected by the cards, without any alterations or audit of any kind by you, is that correct, sir? [199]

A. That's right, sir.

Q. Now, referring to the year 1941, and for each of the months set forth in cards in Government's Exhibit 7—that is to say the records in respect to 1941—will you state month by month the amount of net profit reflected by such cards

(Testimony of William A. Burkett.)

as having been received by the defendant from that horse bet business? A. January, \$1,474.

February, \$2,128.

March, \$2,773.

April and May there are no records.

June, \$941.

July, \$2,287.

August, \$1,273.

September, \$3,295.

October, \$793.

November, \$1,770.

December, \$198.

Q. And have you totalled the net profit as shown by those records as having been received from the business? A. Yes, sir.

Q. For the calendar year 1941?

A. Yes, sir.

Q. And what is the total?

A. For 1941 the net profit is \$16,932. [200]

Q. Now, have you computed similar figures month by month for the year 1942 as is reflected in Government's Exhibit 8, the records for that period? A. Yes, sir.

Q. And will you state the figures of net profit as reflected by Government's Exhibit 8, allowing all expenses claimed on those cards?

A. January, \$1,851.

February, \$4,298.

March, \$2,012.

April, \$621.

May, \$5,130.

June, \$3,997.

(Testimony of William A. Burkett.)

July, \$247.

August, \$3,160.

September, \$5,699.

October, \$2,192.

November, \$3,493.

December, \$1,501.

Q. And have you computed the total net profit for the calendar year 1942 as reflected by those cards? A. Yes, sir.

Q. That is, Government's Exhibit 8, What is that amount?

A. Total net profit for the year 1942 is \$34,001.

Q. Have you made similar computations of the net profit [201] reflected by the record cards, Government's Exhibit 9, for the calendar year 1943?

A. Yes, sir.

Q. And will you, month by month, enumerate the amount of net profit reflected by those accounts? A. January, \$3,531.

February, \$2,679.

March, \$4,137.

April, \$4,259.

May, \$5,522.

June, \$5,495.

July, \$1,426.

August, \$1,408.

September, \$2,196.

Q. There being no cards reflecting October, November and December of 1942, is that correct?

A. That's right, sir.

Q. And have you computed the total amount

(Testimony of William A. Burkett.)

of net profit as shown by the cards, Government's Exhibit 9, for the calendar year 1943?

A. I have, sir.

Q. And what is that amount?

A. The total net profit of the year 1942 is \$30,653.

Q. Now, Mr. Burkett, there has been testimony here relative to the payment of \$105 a month for alleged protection, and it [202] was testified that that payment is reflected in these cards, Government's Exhibits 7, 8 and 9, with respect to each month of operation. If the payment of such amount—strike that.

If such amount were, in fact, paid for each of the months of operation, namely, 1941, and for the ten months computed by you, for the sum of \$1,050, have you computed, then, what the total net profit of the defendant would have been for that year? A. Yes.

Q. What is the figure? A. \$17,982.

Q. And with respect to the year 1942, during which there was 12 months of operation, and the amount of \$105 per month, being the sum of \$1,260, have you computed the amount of net profit which the defendant would have had if such expense is disallowed? A. Yes.

Q. And what is that amount?

A. \$35,261.

Q. And have you made a similar computation with respect to 1943, for the nine months of which records are available? A. Yes, sir.

(Testimony of William A. Burkett.)

Q. And disallowing the payment of \$105 a month for such nine months, or a total of \$945, what is the amount you have [203] computed the net profit to have been? A. \$31,598.

Q. Now, the figures which you have just testified to relative to the net profit shown by these cards and the last computation, which affects a disallowance of the amount paid for alleged protection, is set forth in the schedule which you have, which I just handed you (handing document to the witness)? A. Yes, sir, that is correct.

Q. This was prepared by you, or under your direction? A. Yes, sir.

Mr. Campbell: This will be offered as Government's Exhibit next in order.

The Court: It may be marked in evidence.

The Clerk: Government's Exhibit 13.

(The schedule referred to was received in evidence and marked U. S. Exhibit No. 13.)

Mr. Campbell: You may cross examine.

Cross Examination

Mr. Belli: Q. Mr. Burkett, as I understand it, to summarize your testimony so we will all be clear, and I will, myself, too, with reference to the last sheet, that gives us a recap here that you went through all of these figures of Mr. Krakauer's, or whatever it was, on this card here, and you estimated that from these cards, that in 1941 Julius' [204] net profit should have been around \$16,000—\$16,932, instead of what was declared for him; in 1942 it should have been \$34,000, instead of what

(Testimony of William A. Burkett.)

was declared; and in 1943 it should have been \$30,000, instead of what was declared.

By the way, so we may make a record, do you have there what was declared in the three years? See what I mean?

A. I don't understand your question, Mr. Belli.

Q. What did Julius declare in 1941?

A. Well, you have the exhibit before you, sir.

Q. As profit. You take these, and I think you can do better than I can (handing documents to the witness).

Mr. Campbell: Possibly he could retain one copy and you could retain the other.

Mr. Belli: No, he can tell me on that.

Mr. Campbell: What is your question?

Is there a question?

Mr. Belli: Yes.

Q. In 1941 what did Julius declare as his net profit, or what was declared for him as net profit?

Mr. Campbell: Now, I object to the question in that form, because there are various reports included in the return. There is a net profit from business, and there are also other items of income.

Mr. Belli: Well, that is fair enough. I will withdraw that. We will approach it in another way.

Q. When you compute net profit, the only thing that you put in there, I think you said this, but I want to be clear about it, you didn't include anything or any deductions other than that which appeared on those cards, right, for '41, '42, and '43?

(Testimony of William A. Burkett.)

A. I subtracted the gross take and all the operating expenses, Mr. Wild's salary, which left the net take, that's right.

Q. In other words, you didn't go outside of these three cards that I hold in my hand to compare this last exhibit of the Government, right?

A. We gave him the benefit of the doubt of sleepers, and the expenses of the raids. We didn't include that. We gave him the benefit of it.

Q. Yes. But you didn't deduct anything other than that which appeared on those cards. You didn't have any other facts to work from, did you, when you computed your last exhibit here?

A. That's right.

Mr. Belli: That is all.

Mr. Campbell: Is that all?

Mr. Belli: Yes, that is all.

Mr. Campbell: That is all, Mr. Burkett.

(Witness excused.)

Mr. Campbell: May I suggest the noon recess at this time, your Honor, before calling the next witness? [206]

The Court: Ladies and gentlemen of the jury, we have reached the noon hour, and we will take the noon recess and resume further trial at two o'clock. The same admonition to you, not to discuss the case, nor to form or express any opinion thereon until it is finally submitted to you.

(Whereupon a recess was taken until 2:00 o'clock p.m.) [207]

Afternoon Session, Thursday, August 12, 1948

2:00

The Court: You may proceed, counsel.

HUBERT C. MYTINGER

called on behalf of the Government, sworn.

The Clerk: Q. Will you state your name to the Court and jury?

A. Hubert C. Mytinger.

Direct Examination

Mr. Campbell: Q. What is your business or occupation, Mr. Mytinger?

A. I am assigned the technical adviser, Office of Regional Counsel, Penal Division, Bureau of Internal Revenue.

Q. Treasury Department?

A. Treasury Department.

Q. How long has that been your occupation?

A. I was assigned in February of this year.

Q. Prior to that what was your position?

A. Internal Revenue agent.

Q. For how many years were you an Internal Revenue agent? A. About 12 years.

Q. You are also a licensed public accountant in the State of California? A. I am.

Q. Will you relate briefly the nature of your training and [208] experience prior to becoming an Internal Revenue agent?

A. Well, I was a public accountant and accountant for private commercial firms for approximately ten years prior to becoming an Internal Revenue agent.

Q. And you were an Internal Revenue agent for

(Testimony of Hubert C. Mytinger.)

what length of time? A. Since July 1, 1935.

Q. During the course of your experience, particularly as Internal Revenue agent, and more recently as technical adviser attached to the Penal Division, has it been among your duties to examine income tax returns filed by individuals, corporations, firms and partnerships? A. It has.

Q. Has it been a portion of your duties to compute taxes based upon certain alleged incomes, giving allowances to deductions and credits allowed by law and other exemptions? A. It has.

Q. And that has been your principal work, has it, for the past 12 or 13 years? A. It has.

Q. Now, Mr. Mytinger, I will ask you whether or not the Bureau of Internal Revenue has heretofore made a determination with respect to dividends paid calendar years 1941, '42 and '43 by the California Jockey Club and the Orpheum Building Company, both California corporations, as to the percentage of the [209] dividends paid by such corporations during such calendar years are taxable and what percentage are non-taxable?

A. It has.

Q. Will you state what that determination is or was?

A. With respect to the calendar year 1941, the Bureau has determined that the Orpheum Building Company dividends were 65.61 per cent taxable and the California Jockey Club dividends were 79.29 per cent taxable.

Q. When you say "taxable" does that mean taxable in the hands of the recipients?

(Testimony of Hubert C. Mytinger.)

A. Yes, and that refers to taxable, as dividends.

Q. Yes, taxable as dividends.

A. Yes. Now, with respect to 1942, the Bureau has determined the dividends of the Orpheum Building Company to have been 70.9 per cent taxable, and no dividends were paid by the California Jockey Club in that year.

With respect to the year 1943, the Bureau has determined the dividends paid by the Orpheum Building Company to have been 82.07 per cent taxable; and the dividends paid by the Jockey Club to have been fully taxable.

Q. For the benefit of the jury, when we refer to dividends received by a stock owner as being taxable or non-taxable, will you state briefly the basis and purpose of such determination?

A. Generally, if they are paid from the accumulated earnings of the paying corporation, they are considered taxable income. [210]

Q. But if they are paid from a sale of assets or liquidation of any of the assets of the corporation, in that event they are not taxable to the person receiving them, is that correct?

A. To the extent they may be repaid from recovery of capital, that would be true.

Q. That is the basis of the determination here?

A. That is true.

Q. So that a certain percentage of the dividends paid by those two corporations in the years you indicated would not be taxable to the stockholder receiving them in the amount you have designated?

(Testimony of Hubert C. Mytinger.)

A. Not unless the amount he received exceeded the cost of his stock.

Q. Now, Mr. Mytinger, I call your attention to Government Exhibits 1 to 6, inclusive, which are the individual income tax returns of Julius Wild and his wife Emma Wild, for the calendar years 1941, '42 and '43, there being an individual return for both the husband and wife for such years. Have you heretofore examined or seen these returns?

A. I have.

Q. Mr. Mytinger, assuming that during the calendar year 1941 Julius Wild was married but had no other dividends; assuming further that Julius Wild and his wife filed separate returns for the calendar year 1941, each claiming one half of the personal exemption allowed by law, namely, \$750, as shown by the Government [211] Exhibits 1 and 4 and that during the said year 1941, the community, that is, Julius Wild and his wife received dividends on stock owned by them in the Orpheum Building Company and the California Jockey Club in the total amount of \$3484.50, as set forth in the exhibits to which I have heretofore called your attention, of which amount of dividends the sum of \$655.54 was taxable income, computed upon the basis you have testified to as that proportion which is taxable; assuming further that the community received net income from the business of horse race booking of \$17,982, so that Wild and his wife received a total gross community income of \$20,637.54, of which Julius Wild's one half on a community basis was the sum of \$10,318.77; assuming further that Julius

(Testimony of Hubert C. Mytinger.)

Wild was entitled to what was the non-business deductions which he claimed on his 1941 individual income tax return, Government Exhibit No. 1, of \$1,181.00, so that his net income on community property basis for the calendar year 1941 was the sum of \$9,137.77; assuming further that he was entitled to the earned income credit set forth on his return, that is, \$339.90:

What would have been his total tax liability on his individual income tax return for the year 1941?

A. \$1,303.34.

Q. What was the amount which he reported as due from him for the calendar year 1941 on the income tax return filed by him for that year which is Government Exhibit No. 1? [212]

A. \$270.66.

Q. Will you compute the difference between those two amounts?

A. The difference is \$1,032.68.

Q. Mr. Mytinger, assuming that during the calendar year 1942 the defendant Julius Wild was married, but living separate from his wife, had no other dividends; assuming further that for such calendar year Julius Wild and his wife filed separate returns each claiming one half of the personal exemption allowed by law, that is, \$500, as set forth in Government Exhibits 2 and 5, respectively; assuming further that during the said calendar year the community, that is, Julius Wild and his wife, received dividends on stock owned by them in the **Orpheum Building Company**, a corporation, of \$1,119 as set forth in the returns to which I have

(Testimony of Hubert C. Mytinger.)

directed your attention, of which amount \$793.37 was taxable income upon the basis determined by the Bureau of Internal Revenue with respect to such corporation; assuming further that the community net income from the business of bookmaking on horses was the sum of \$35,261, or a total community income of \$36,064.37, of which one-half, or \$18,027.19 was taxable, to the defendant Julius Wild, as his share of the community income; and assuming further that Julius Wild was entitled to the non-business deduction as set forth in his return, Government Exhibit No. 2, that is \$1,941.36, so that his net income was the sum of \$16,085.83; and assuming further that he was entitled to the earned income credit as [213] claimed by him on his return of \$517.60:

What would have been his total tax liability to the United States on his individual income tax return for 1942? A. \$4918.42.

Q. What was the amount reported by him as due on his individual income tax return for 1942, Government Exhibit No. 2? A. \$964.72.

Q. Will you compute the difference between the amount you found to be due in the hypothetical question and that which he reported in Government Exhibit No. 2?

A. The difference is \$3953.70.

Q. Mr. Mytinger, assuming that during the calendar year 1943, Julius Wild was married and had no other dependent, assuming further that he and his wife filed separate returns for such year, each

(Testimony of Hubert C. Mytinger.)

purporting to report one half of the community income and deductions as shown by Government Exhibits 3 and 6 respectively; assuming further that each claimed one half of the personal exemption allowed by law, that is, \$600 as set forth on said return; assuming further that the community, that is, Julius Wild and his wife, received dividends on stock owned by them in the California Jockey Club and Orpheum Building Company, both California corporations, in the amount of \$3671.60 as set forth in the returns to which I have directed your attention, of which amount \$336.02 was taxable as income based upon the determination of the Bureau of Internal Revenue as to [214] taxability of dividends of those corporations for that year; assuming further that the community received net income from the business of bookmaking in the amount of \$31,598; so that the total community income was the amount of \$34,934.02; assuming further that the community was entitled to all of the non-business deductions set forth on the returns, Government Exhibits 3 and 6, respectively, that is \$536.19; so that the income tax net income of the community was the sum of \$34,397.83 and the Victory tax net income of the community was the sum of \$34,934.02, one half of which amount should have been reported by the defendant Julius Wild on his individual income tax return for 1943:

What would then have been the total liability of defendant Julius Wild for income and Victory

(Testimony of Hubert C. Mytinger.)

tax to the United States for the calendar year 1943 on his individual return? A. \$5919.80.

Q. Will you state the amount of tax liability for income and Victory tax reported by the defendant Julius Wild on his individual return for 1943, being Government Exhibit No. 3?

A. The amount reported on line 16, page 4 of that return is \$829.78.

Q. Will you compute the difference between that which you state would have been due based upon the hypothetical question and that which he reported in the individual income tax return filed by him? [215]

A. The difference would be \$5090.02.

Mr. Campbell: You may cross examine.

Cross Examination

Mr. Belli: Q. Mr. Mytinger, is it? Is that the *cross* pronunciation? A. Mytinger.

Q. The total of the three years, 1941, '42 and '43, according to your computations, Mr. Wild was short in the payment of taxes in the total amount of \$10,075.72? Am I correct on my addition?

A. I haven't totaled those, counsel.

Q. Well, let's do it. A. All right.

Mr. Belli: That should equal the amount in the indictment; does it, counsel?

Mr. Campbell: Substantially, I believe.

Mr. Belli: Q. It is about \$10,000, isn't it?

A. Yes, I make it \$10,076.40.

Mr. Campbell: May I have that figure, please?

(Testimony of Hubert C. Mytinger.)

The Witness: A. \$10,076.40 on my first addition here.

Mr. Belli: Q. Was your last one \$1590.02?

A. Right.

Q. What happened to that two cents?

A. I added that in along with the other.

Q. Was it \$10,032 and no cents? [216]

A. No, \$10,076.40.

Q. Well, let's get it right. Is that the first one?

A. No, that is the other. I have \$1032.68 for 1941.

Q. For 1941?

A. Yes, right, and \$3953.70 for the second one.

Q. For 1942?

A. Yes, and \$5090.02 for 1943.

Q. Then, you have \$10,076.40 for the total, is that right? A. Yes, 10,076.40.

Q. In the hypothetical question given you for each of those years, what you have taken other than the taxpayer's declaration for income such as his dividends from the Jockey Club stock and the Orpheum Theater and his other dividends as part of your hypothetical question, the return as it comes off these three sets of cards of Mr. Krakauer—in other words, in 1941, that the net profit was \$16,932—right?

A. I have taken the figures read by Mr. Campbell.

Mr. Belli: It will be stipulated, Mr. Campbell, that that is what the net profit was in the hypothetical question?

(Testimony of Hubert C. Mytinger.)

Mr. Campbell: The net profit in the hypothetical question was testified to in the computations of Mr. Burkett and set forth in one of the Government Exhibits.

Mr. Belli: No. 13?

Mr. Campbell: I believe that is correct, yes.

Mr. Belli: All right. [217]

Q. Now, in computing income taxes, of course—withdraw. Are you the man that determines what is deductible and what is not deductible in the taxes, I mean as business expense?

A. Not necessarily.

Q. Well, maybe you can help us a little bit on this: If Julius, or Mr. Wild, during these three taxable years went down to Caliente and made book down there, and if his business were that of a bookmaker here in San Francisco, would or would not his ordinary business expenses of transportation to Caliente be deductible?

A. If they were in connection with his business, I would say yes.

Q. His business being that of bookmaker, right?

A. That I don't know.

Q. Would his hotel bills be deductible?

A. If it was in connection with his business, yes, sir.

Q. Would the transportation from the airport to the racetrack from San Diego over to Caliente be deductible?

A. If it was in connection with his business.

(Testimony of Hubert C. Mytinger.)

Q. If he took someone along with him to make book, would that be deductible?

A. Ordinarily, yes.

Q. Long distance phone calls—would they be deductible?

A. If they were in connection with his business, yes.

Q. Contributions to church, charity, even from a bookmaker, [218] would be deductible as business expenses, or just be regular deductions in income tax?

A. They would not be deductible as business deductions, but would be deductible subject to limitations.

Q. Subject to limitations?

A. That's right.

Q. Certainly, if he was a bookmaker and in his business as bookmaker he did, as some of the insurance companies do when they get too big a risk, he went out and put some of that with some other bookmakers and lost and had to cover that, that would be deductible, too, would it not, as business expense?

A. If it was part of his business, yes.

Q. Would losses by theft in the ordinary course of business be deductible as business expense?

Mr. Campbell: Just a minute. I think there should be some limitation on this. If it is to test the credibility and ability of the witness, all right, but none of these facts are in evidence yet.

The Court: That is true, counsel. Your purpose in this present inquiry is what?

(Testimony of Hubert C. Mytinger.)

Mr. Belli: It is premature, perhaps, but rather than call him back or elicit this information from an expert of my own, I thought we might do it from the Government's witnesses, because we intend to prove all of these facts.

Mr. Campbell: I suggest as a matter of law that all [219] reasonable expenses of doing business are deductible. It does not require an expert on that. I thought these questions were for the purpose of determining the credibility and expertness of this witness.

Mr. Belli: No, we stipulate to that.

The Court: What was the last question?

(Record read.)

The Court: You may answer.

The Witness: A. Ordinarily yes, in the amount sustained.

Mr. Belli: I think that is all. Thank you very much.

Mr. McMillan: At this time, if it please your Honor, the Government rests.

(Government rests.)

Mr. Belli: If your Honor please, there are some other witnesses that I understood would be called. However, if the Government does not call them, we will call them as our witnesses this afternoon. At least we will start with one.

I did intend to make rather an extensive opening statement, but I hate to lose the time this afternoon by taking time tonight to prepare it. So I

would like to proceed now and put on at least one witness.

The Court: Do you feel that an outline of your general defense might be helpful to the jury as well as the Court?

Mr. Belli: I think very definitely, yes.

The Court: I think it would be. It would help the jury [220] as well as the Court to follow your presentation of the evidence. From my experience in these Courts an opening statement on behalf of the defendant is helpful, and then correlate the evidence in the light of the general picture.

What is your disposition concerning that?

Mr. Belli: I would not be able to do much correlating this afternoon. The close of the Government's case comes rather abruptly, but I don't ask for a continuance because I am loath to lose this time to keep your Honor and the jury here. I would be satisfied to present it all in argument.

Mr. Campbell: Would it be of assistance if we took a short recess at this time?

The Court: We might have in mind, if the Clerk has not already announced to counsel as well as the litigants and the jurors that tomorrow morning services will take place at St. Marys Cathedral for Senior Circuit Judge Garrecht, whose death has already been announced in the presence of the jury. The Mass starts at 10:00 o'clock. I have scheduled criminal cases at 11:30 tomorrow morning. So in the very nature of things we can not go forward with this case tomorrow morning.

So I would like to utilize what time we could this afternoon.

Mr. Belli: Well, I could make a brief opening statement now and then call Mr. Hughes.

The Court: Very well. [221]

OPENING STATEMENT ON BEHALF
OF DEFENDANT

Mr. Belli: Ladies and gentlemen of the jury, if I may briefly, and certainly not in the spirit of argument, but I hope in the nature of expectation, I want to tell you our theory of the defense as it will unfold to you. And I give you this so that I hope it will be of assistance for you to follow what our contentions are in the defense of my client, Mr. Wild.

It is not my purpose—and the Government was very fair in this—to defend his business of book-making, or to go again into the question of pay-offs or anything of that kind. The only thing I have to do is present the defense of this man, of Julius Wild, who is charged with wilfully evading and failing to report his income tax.

We will not do that under the subterfuge of any agents nor will we rely on Julius Wild's business activity or business acumen or lack of it.

I think the evidence will show, and we will go into it more elaborately, the operation of Julius Wild's business.

You have heard a little bit of it in this place called "the room," where Mr. Wild operated.

The evidence will show further these cards here that the Government has introduced would give us an indication from the last witness, if these were run up, the totals and the deductions taken on these

cards; if you would assume these cards to [222] be correct, then Julius Wild owes the Government at the present time some \$10,000 in taxes.

We are going to show you as was indicated with Mr. Krakauer, that a great deal of Mr. Wild's business was transacted out of "the room".

We will call Mr. Hughes, Mr. Bob Hughes, one of the gentlemen who went to Tijuana with Mr. Wild, who went down to Mr. Kyne's track down the Peninsula here, and we will show because of the odds Julius Wild gave over the telephone to make the business attractive and attract other people in the nature of advertising, that in the very nature of his business outside of "the room" here, that Julius Wild lost heavily.

We will also show that the so-called, to use the vernacular, "smart money" took Julius Wild on the telephone, and the runners from the various clubs that came into the room, other than the room that Mr. Krakauer was in, took Julius Wild and took him heavily.

We will try as best we can to reconstruct, ladies and gentlemen, the financial picture for you over this period of time, showing you Julius Wild's worth and the net worth audit at the time of the beginning and at the end of the period and show to you what his taxes were and should have been just as he described them to Uncle Sam.

We are not going, ladies and gentlemen—and this is not in the sense of argument, but so you will follow our testimony—to [223] castigate Mr.

Krakauer. If things in here are factual we will accept them as fact.

Mr. Hughes will testify on those cards. However, ladies and gentlemen, the evidence will show that Mr. Wild had other records, and that he told the Government he had other records at or about the time the informer, or Mr. Krakauer, left Mr. Wild's employ, that those records likewise have disappeared. We cannot prove those things with the records, but by our theory and evidence we will give you an inference, and his Honor will instruct you on that at the end of the case. The inference is that if this man who signed the receipts—that all of the records were left with Mr. Wild—took these records, here, that he likewise took other records that Mr. Wild had. At least, we will establish beyond any question that Mr. Wild did in some fashion keep other records of the Winter book, the losses on Seabiscuit, and some horses like that, and some horses he had in Caliente, and some he had in San Diego.

We will show that Julius Wild—and we won't claim all of these deductions for his generosity, or for his entertainment, nor will we claim that these times he went out on one of what one of these witnesses characterized as "binges" are deductible items, but we will show he was under heavy expense when he went to Caliente. He maintained a room every week, whether he was there, or not, in the hotel at Caliente. [224] He paid for the hotel and automobile, and he paid for Mr. Hughes and the various expenses he had.

We will show you in one count alone a fabulous character in Arizona, who took Julius Wild for a month and a half for a large sum of money.

We will establish and prove that to you, that that, ladies and gentlemen, is a deductible item that appears nowhere within these cards.

We will prove that by one of the witnesses who have been subpoenaed by the Government and a witness who was not put on the stand by them, one of Mr. Wild's former employees.

We will show you in one instance along in the work sheet that Mr. Callahan prepared, in attempting to give the Government a correct picture of these taxes, that he all through the year declared the rent as \$100, whereas, as a matter of fact, and in truth, ladies and gentlemen, the rent was \$117.

We will show, if anything, Julius Wild actually erred on the other side; rather than owing Uncle Sam anything, and after we show what Julius Wild has lost in "the room", and down in Caliente, and what he lost because of some of the "smart money", that he overpaid rather than underpaid his taxes.

We will call Mr. Callahan, the man that was supposed to prepare the returns. He will tell you, I believe, that he gave no figures, whatsoever, to Mr. Krakauer, that any figures that Mr. Krakauer had he got, himself, or got from Mr. Wild; and [225] if the figures on the cards that were brought up to the Internal Revenue and represent the taxes that were paid, were less than what were on these cards, the reason is because in Mr. Wild's book

had these deductions from Caliente, and from the man in Arizona, and from Bill Kyne down at Bay Meadows, and the rest of the places that don't appear here, and admittedly they don't appear here because these are in "the room" and in "the room" only.

Our theory, ladies and gentlemen, is that here is a situation where Uncle Sam is claiming he is a partner in a bookmaking establishment; and being a partner in a bookmaking establishment, ladies and gentlemen, we will show you that we are entitled against our other partner to take any more deductions and show you the picture of the whole business, rather than rest and rely on the part that Mr. Krakauer alone gave you. And we will submit, ladies and gentlemen, after we have shown you the true picture of this, in all due respect, that Uncle Sam, the other partner, really owes us money, and we will ask and expect at your hands in all sincerity a verdict of acquittal.

May we call Mr. Hughes?

ROBERT E. HUGHES,

called as a witness on behalf of defendant; sworn.

The Clerk: Q. Will you state your name to the court and [226] jury?

A. Robert E. Hughes.

Direct Examination

Mr. Belli: Q. You were subpoenaed by the Government, were you not, Mr. Hughes?

A. That's right, sir.

Q. Let me ask you, presently what is your oc-

(Testimony of Robert E. Hughes.)

cupation? A. I am an electrician.

Q. Were you working for Julius during 1941, '42, and '43? A. '41, '42, and part of '43.

Q. You left, I presume, in 1943 to go into war work? A. That's right, sir.

Q. How long were you away from Julius?

A. Pardon me?

Q. How long were you away from Julius, then? Did the place close, there, or what happened?

A. I understand right after that it did.

Q. When you first went there was Mr. Krakauer working for Julius? A. No, sir.

Q. How long after you were there did Mr. Krakauer come?

A. The first time I saw Mr. Krakauer was approximately in 1936. [227]

Q. What did he do at Julius' establishment?

A. Nothing at the time.

Q. Well, when you went there and you were there, what were his duties?

A. He came downstairs and helped me—as he stated, I had the room upstairs. The book was closed as far as—

Q. What year is this? A. 1936.

Q. Let us go a little bit ahead of that; let us go on up to 1941: In 1941 where was Mr. Krakauer working—what part of the establishment?

A. He was working as a ticket writer on the left-hand side of the counter as you approach it.

Q. How many employees were there?

A. Two ticket writers, one cashier, one door-man and myself.

(Testimony of Robert E. Hughes.)

Q. Now, by the expression that has been used here, "the room", will you give us just a brief description of how the bets were handled in the room there? Was there anyone that supervised it or was in charge of the room, or what? Was Mr. Krakauer in charge?

A. No, I was in charge of the room play.

Q. The room play means what? What happened in the room?

A. The customer comes into the room; he goes up to the board, which was hung on a swivel. Numbers, approximate odds, and the horses' names, and the weights and jockeys were on the board. [228] In front of that was a line laid—brought up to date and laid by Mr. Wild with approximate odds that you could either take and declare, or you could take the track odds. Mr. Krakauer wrote tickets, and another fellow wrote tickets, and I supervised and watched the tickets as they came in, to see that the approximate odds were correct and that the bet was not out of line as far as big play was concerned.

Q. Were there any telephone bets taken in the room—what we call the room, here?

A. No, no telephone bets; that was handled separately.

Q. That was entirely separate?

A. That's right.

Mr. Campbell: May I have the last two answers read, please?

(Record read.)

(Testimony of Robert E. Hughes.)

Mr. Belli: Q. Anybody that wanted to bet in the room had to come in there?

A. In front of the counter, yes, sir.

Q. Then you had, shall we say, an exclusive clientele, or perhaps a clientele that did not like to come in, that telephoned in?

A. No, there was only a limited amount on the phone, but they were more or less big betters and didn't like to come into the room and advertise their business over the counter.

Q. All right. Now, let's stay with the room just a minute [229] and refer to these three exhibits here. You have had an opportunity to go over these, Mr. Hughes? A. Yes.

Q. By "these" I refer to Exhibits 7, 8, and 9.

A. Yes, sir.

Q. We have had part of this from Mr. Krakauer. He kept part of the card, did he, and you kept the other part?

A. Well, I didn't keep it. All I did was enter my writing, the figures on there, and the cards were kept by him exclusively.

Q. Just take one of the cards, there. You can take one of them out, but don't get it out of place, and just give us a fast resume as to how you made notations down there, and what was done in the ordinary custom.

A. On the front of the card the fixed and various expenses for the day appeared—or this is, as I understand, a Saturday card.

(Testimony of Robert E. Hughes.)

Q. Let me stop you for the sake of time. Would you say that Mr. Krakauer's explanation of that was correct? A. Absolutely.

Q. Fair enough. Just show us, starting from there, what you put on the card, and what he put on the card.

Mr. Campbell: Will you refer to the date of the particular card?

Mr. Belli: Yes. [230]

Q. What is the date of the particular card?

A. January 4, 1940. I think that is the one you used.

Mr. Campbell: Q. January 4, 1941?

A. Yes.

Mr. Belli: You can use this photostat of the card or the original, whichever will be clearer to you.

Mr. Campbell: The clerk has 12 cards.

Mr. Belli: Q. Just tell us what you put on and what he put on, and if your Honor has no objection I can give these others to the jurors so that they can follow. Which side are you going to look at? A. This side.

Mr. Belli: All right.

(Cards handed to jurors.)

Mr. Belli: Q. Have you any more of those?

A. Here is one. I would rather have the originals.

Mr. Belli: Q. Now, will you explain it to us?

A. On my card, it is the top four items on the front, the papers, the forms, salaries, and the jani-

(Testimony of Robert E. Hughes.)

tor, were in Mr. Krakauer's handwriting and were usually always made in ink. They were a set figure. The next three items are in pencil and are printed, and those are my entries, and that is all on that side of the sheet.

Mr. Campbell: May we have identified the three items?

Mr. Belli: Q. Read them. [231]

A. The one marked "Ext-Rent-Nut." Those three are in my handwriting and are my entries, and that is all on that side of the sheet.

Q. All right, anything on the other side that is in your handwriting?

A. The other side of the sheet, the figure under "Credit" of three three seven two is mine. The payout of two nine six three eight five is mine. The expense of three one six six five is mine. The over and short of forty-eight fifty is mine, and the total of thirty-three twenty-nine is mine. Under the credit side of thirty three seventy two, that is mine. The subtraction is mine, with the figures "Total gain today \$43," is mine, and that is all.

Q. At the end of the day, if you would have \$43 would that be in cash?

A. That would be in cash.

Q. Did Julius keep the bank account?

A. Pardon me?

Q. Did Julius keep the bank account?

A. In the book, you mean?

Q. Yes. A. Oh, yes.

Mr. Campbell: Pardon me, Mr. Belli, we have had two Juliuses here, Julius Wild and Julius

(Testimony of Robert E. Hughes.)

Krakauer. Do I understand that when you say "Julius" you are referring to the defendant? [232]

Mr. Belli: Yes, when I use the term "Julius" I am referring to Julius Wild. I did not know that Mr. Krakauer's first name was Julius.

Mr. Campbell: I just want to get that straight.

Mr. Belli: I should say "Mr. *Weil*," but I slip and say "Julius," and when I do it is Julius Wild to whom I am referring and not the other witness.

Mr. Campbell: Yes.

Mr. Belli: Q. With reference to the \$43, that would be given in cash to Julius?

A. At the end of the day it would be.

Q. Where did he have bank accounts, if you know?

A. The only bank account he had in the beginning that I know of was he had an account at the Day and Night Bank at Powell and Market.

Q. Any others that you know of?

A. And he had one checking account at the American Trust over at Civic Center.

Q. How long did he have that one?

A. It was only within the last—Well, I would say as of 1942, or maybe at the beginning of 1942. That was when I found out about it.

Q. Were any deposits made to any other bank accounts?

A. That I couldn't tell you, because I didn't handle that part of the business. Mr. Krakauer handled that, likewise. [233]

(Testimony of Robert E. Hughes.)

Q. In other words, after the cash was given to Mr. Wild, Julius, at the end of the day that is all you saw of it? A. Yes.

Q. And still there was a daily loss or dividend paid by Julius?

A. To bring it back, to bring the bankroll up to a working amount.

Q. Would that card you have in your hand for that day reflect all of the activity in that bookie establishment of all of the profits or all of the loss?

A. For goodness sakes, no.

Q. What? A. No, no.

Q. Why? Explain that fully, can you?

A. To get into the room you came downstairs and there was a number of what we call runners who were fellows who would have a long sheet of paper with a certain amount of bets on them, and they would come in to Mr. Wild, who was sitting at his desk, and would lay the piece of paper down in front of him, and they would ask him if he wanted—

Mr. Campbell: Just a minute, before we go into the conversation I want to have the foundation established.

Mr. Belli: Where did the runners come from? As a witness I ask you for the names of the places where the runners came from, if you can remember.

A. One would be the Kingston Club; another would be the Greenwall [234] Club—

Q. Go ahead—Have you any other books?

(Testimony of Robert E. Hughes.)

A. Well, I never knew where they came from. All I know is that people came in there.

Q. On the average day of business, how many would come in?

A. Anywhere from two to ten.

Q. Would they be the same people, or different people?

A. They would be different people and would be—sometimes they would come in the morning, and sometimes they would come back in the afternoon. Especially, if the California tracks were running, they would come in in the morning for the Eastern tracks, and come back in the afternoon for the California tracks.

Q. That does not appear on any of those cards.

Mr. Campbell: I object to that unless he knows what was in the other entries.

The Court: Objection overruled.

Mr. Belli: Q. In the ordinary course of business of the room, would any of this business appear on that card? A. No, sir.

Q. Why not?

A. Because it was handled altogether separately.

Q. Why didn't Mr. Krakauer participate in that activity?

Mr. Campbell: I object to that as argumentative.

Mr. Belli: If you know. [235]

The Court: It is argumentative, I suppose.

Mr. Belli: Q. Did Mr. Krakauer have anything to do with this part of the business, at all?

(Testimony of Robert E. Hughes.)

A. No, sir.

Q. Who else besides yourself and Mr. Wild took care of this part of the business?

A. Nobody.

Q. Now, was there any record made of the winnings and the losings on these bets?

A. Yes, there was.

Q. And where was that kept?

A. It was kept in a little black book, I should say a book of about 6x8.

Q. Have you seen the entries in there?

A. Oh, in fact, if the book would be open, why, my entries would probably be in there as well as on this card.

Q. Your handwriting? A. Yes, sir.

Q. Did Mr. Krakauer have access to that book, too?

A. That I couldn't tell you because I do not know.

Q. With reference to the telephone bets, how were they arranged and how were they made?

A. Well, the phone would either ring and I would answer it, or Mr. Wild would answer it, and when the players would make their bets over the phone, why, they would be accepted— [236] the regular players, the *best* would be accepted without reservation.

Q. By regular players, you mean people who had established credit? [236-a]

A. Yes, that's right, they would make their bets and no matter what the bet was, we would take

(Testimony of Robert E. Hughes.)

it. We always figured we could take and lay the bet off if it was too large, or if it was on a hot horse, and we didn't want to handle it.

Q. How much of your business was done in the room by Mr. Krakauer, handled as shown by the card and business in the room you and Julius were running?

A. I would say it varied. If the California tracks were running, I would say that the phone and telephone pad bets were larger than the room play.

Q. The room play that Mr. Krakauer was in?

A. That's right.

Q. Where were your biggest winnings, or where were your biggest losses, in the Krakauer room or in the room you and Julius ran?

Mr. Campbell: Objected to as not the best evidence and calling for this witness' conclusion.

The Court: I will overrule the objection. You might answer that.

Mr. Belli: Q. Do you have the question?

A. The room play, as I may put it, as long as you are using vernacular, was "bread and butter." In other words, they always figured this would always be there.

Q. By "this" you mean what?

A. The room play would always be there, it was always steady; but the other bettors, why, when they won, sometimes you would [237] not see the runners, especially, you wouldn't see them for maybe two or three days because they would figure

(Testimony of Robert E. Hughes.)

Julius would have to cool off if they "knocked him in the creek," as we call it, so they might not come back for two or three days.

Q. Why was it there was any difference in that type of play from the runners, the smart money and the people who bet in the room that Mr. Krakauer was in?

A. That is very easy. When the runners would come in, if I can use a runner for an explanation—a runner would come in. He would lay down a sheet with the large amount of various bets. In order for him to claim those bets, he would have to take, or they would have to be taken at a price, a set price regardless of what the mutuel board at the track. Now, there has been cases where the mutuel at the track was larger, but in 98 per cent of the time I would say the mutuel at the track was considerably smaller. We would lay a horse, possibly, say for \$10 at ten to one. The pay-off would be on that particular horse, \$110, ten to one and your money back.

Q. Would your odds in the room on the same horse and the same race be better or lower—

A. No, the minute the runner would come in and we would see that, we would immediately cut the room odds on him. Now, if the man in the room wanted to bet it beforehand he could have ten to one, but as soon as we found there was money for the horse, the odds were usually cut, approximately in two. [238]

Q. All right, continue with the reason for the difference.

(Testimony of Robert E. Hughes.)

A. When the bet was accepted at \$10, say, at ten to one, and the horse won, you would find, as I told you in 98 per cent of the cases the horse would pay considerably smaller in the mutuels. The reason for that would be because when they would get all their money set in town with the bookmakers, they would be satisfied and figure any price was a good price if the horse would win. So they would send all the rest of the money they collected together down to the track which would naturally cut the mutuel play and cut the odds on the horse. If the horse won, he would pay ten to one, or \$22, and you would find in numerous cases, too numerous to mention, and anybody with any experience would find that after the track he probably would pay around \$8, which would be approximately three to one. So therefore this business was no good, but Mr. Wild for some reason or other persisted in keeping it both as additional to the room and also to keep informed on what was going on around town.

Q. How about other bookies, as the custom of the business, would they have the two separate rooms like that?

A. Absolutely; every book does.

Q. In other words, they have one room where you come in and bet over the counter, and a different set of personnel handles that from the personnel that handles the room where you telephone them in. [239]

A. Not necessarily. A man worked in the busi-

(Testimony of Robert E. Hughes.)

ness—well, the same man or two men could handle both rooms at the same time. You have time in between races to take care of that.

Q. Can you tell us, in lieu of our records on the room that you and Julius were in, did you win in 1941 through the year on that room or did you lose, or what was the situation?

A. As far as—well, without any figures to substantiate me, I would say the inside room was always loser.

Q. How about 1942 and 1943?

A. 1942 the same way, and as far as I know, 1943 was just as bad.

Q. Now, we haven't got any records to substantiate this room which you say lost, so you do us the next best thing and give us the names of the big bettors, who were there, so we can establish if there was any winnings or losses.

A. Dr. Shornek.

Q. How do you spell that?

A. I don't know.

Q. Would it be S-h-o-r-n-e-k?

A. That would be close enough. Mr. Krakauer, if he was here, could tell you.

Q. We won't trouble him again. We will ask you. Go ahead.

A. He had placed bets, or he had a system whereby he bet—

Mr. Campbell: Just a minute. I object to this. This has no bearing on the issues. [240]

(Testimony of Robert E. Hughes.)

Mr. Belli: Let me lay just a little further foundation with respect to that.

The Court: I think you should lay a foundation. The identity of this doctor may be established in terms of his operations.

Mr. Belli: We will refer to him as operator No. 1.

Q. This operator No. 1, as a matter of fact, established a credit with you, didn't he?

A. Yes, sir, between \$2000 and \$2500.

Q. When did he establish that credit with you and how, so that we can check that?

A. The only way that that could be checked, if I may say, Mr. Krakauer kept a book that every morning when the previous sheets, racing forms, would come in, he would immediately or that night if he could obtain them after 10:30 or 11:00 o'clock, he would stay there and he would sit down and make in this book all the entries of the system that operator 1, as you call him played.

Q. Why was that done by Mr. Krakauer, if you know?

A. Well, he—

Mr. Campbell: Just a minute. I suggest this is all immaterial and incompetent.

Mr. Belli: We will connect it up, I assure you, your Honor.

The Court: Mr. Krakauer did testify either on direct or [241] cross examination that he had a pattern worked out.

Mr. Belli: Exactly.

The Court: And if it suited his particular purpose he would make a bet or small bets if play

(Testimony of Robert E. Hughes.)
meshed with his idea and notions. I assume you are coming to that pattern.

Mr. Belli: Exactly, your Honor.

The Court: All right, go ahead.

Mr. Belli: Q. What did Mr. Krakauer tell you with reference to this out-of-state operator's pattern?

Mr. Campbell: That is objected to as incompetent.

The Court: Objection overruled.

The Witness: A. Mr. Krakauer said it was the best system he had ever played and he started to play it, but on a very small scale.

Mr. Belli: Q. Tell us the scale this out-of-state operator played on, and tell us how he played, and whether Julius won or lost.

The Court: One moment: Do I understand this witness handled these transactions?

Mr. Belli: To be sure, I better see.

The Court: Q. Did you handle these yourself?

A. In the beginning I did, sir.

The Court: Specify the dates.

Mr. Belli: Q. Specify the dates and give us every bit of information you can resurrect out of your mind on this. [242]

A. The dates I couldn't tell you, but I know it was between 1941 and 1943—I would say between 1940 and 1943. The figures would be substantiated by a large book, that the winter book bets were kept in, and operator No. 1 books were kept in.

The Court: That might well be in the year 1940, however.

(Testimony of Robert E. Hughes.)

The Witness: No, I don't think so, because we had the Santa Anita Handicap at that time and that was enough business to keep track of and we did not handle the other one.

The Court: All right.

Mr. Belli: Q. Then, after the account was established with you, you say for a couple of thousand dollars? A. Yes, sir.

Q. Tell us what this operator did.

Mr. Campbell: May I ask a question on voir dire?

The Court: Yes.

Mr. Campbell: Q. You say you personally handled this for a period of time?

A. Just for a few days, sir. I would come in at 9:00 o'clock in the morning and I left immediately after the races were over.

Q. How many days did you handle it?

A. For about a week.

Q. When was that week? When did it begin? Was that after the beginning of the play?

A. That was the week Dr. Shornek first sent his money in. [243]

Q. And you didn't handle it after that?

A. No, sir.

Q. You had nothing to do with it after that?

A. Outside of watching it and checking with Mr. Krakauer to make sure that the amount was right and the prices were right.

Q. Did you make any entries with respect to the play after that? A. No, sir.

(Testimony of Robert E. Hughes.)

Q. In any book? A. No, sir.

Q. So that all the information you had after that first week was what others may have told you? A. No, sir.

Q. What information do you have, that is, the source of the information?

A. That the plays were marked down in this book.

Q. Did you mark them down?

A. No, Mr. Krakauer did.

Q. Did you see the information, the original documents from which he got the information?

A. Yes, sir, that was all underlined and cut out.

Q. What was the nature of those documents?

A. The racing forms where the plays were determined from.

Q. Did you see those and maintain those documents? A. No, I didn't. [244]

Q. Did you see this operator No. 1, as you call him, in connection with those bets after that first week? A. No, sir.

Q. Did you see any correspondence or writing about it? A. Yes, sir.

Q. Letters? A. Yes, sir.

Q. After the first week? A. Yes, sir.

Q. Where were those, if you know?

A. I don't know; Mr. Krakauer handled those.

Mr. Belli: Q. Mr. Who?

A. Mr. Krakauer.

Mr. Campbell: Q. When did you last see those letters?

(Testimony of Robert E. Hughes.)

A. I saw them as they came in, and that is the last time that I ever saw them.

Q. Did they set out the terms of the bet?

A. The first letter did.

Q. Did the following letters do so?

A. No, they just asked for money.

Q. They were just requests for money?

A. Yes.

Mr. Campbell: I submit the testimony of this witness should be limited to the period he was handling these entries.

The Court: I think so. [245]

Mr. Belli: Well, if he knows for the whole period.

The Court: This witness claims Mr. Krakauer saw the letters.

Mr. Belli: If I put him on, then I have to vouch for his truth and integrity and I don't care to do so.

The Court: I understand, but the fact appears, however, uncontradicted from this witness, that Mr. Krakauer handled the transactions in the main.

Q. Is that right? A. Yes.

Mr. Belli: But he was as familiar with Mr. Krakauer.

The Court: Only up to a certain point does he claim familiarity with those.

Q. Is that correct?

A. As far as keeping and handling of them, yes.

Mr. Belli: Let's find out.

(Testimony of Robert E. Hughes.)

The Court: All right.

Mr. Belli: Q. We are going to ask you about this operator's system only to see if Julius won or lost in this period of time; so will you tell his Honor and the ladies and gentlemen of the jury how this operator first established the contact with Mr. Wild and how the deposits were made and then how he started operations and then up to the time when you stopped handling it personally, whether Julius was winning or losing.

Mr. Campbell: I object to the question and ask it be [246] limited to the statements made to him and during the period.

The Court: Objection overruled. You may answer the question.

Mr. Belli: Q. Go ahead.

A. The first time I ever heard of the transaction to which you refer was when Mr. Wild came from down south.

The Court: Now, fix that time by reference to an event. It might be a handicap or it might be some other event that stood out in your memory so we can get the dates here.

The Witness: I again say, it is practically impossible. I am not of the type—

The Court: Was it in the year 1940?

A. That I couldn't tell you. I haven't any idea.

Mr. Belli: Q. Can you place it in relation to some event? A little while ago you thought something about the Santa Anita Handicap. Can you place it before that?

(Testimony of Robert E. Hughes.)

A. No, I can not, because we book the Santa Anita Handicap every year in the winter book.

Q. But it would be later in the year than the Santa Anita Handicap?

A. Yes, later in the year than the Santa Anita Handicap.

Q. And the Santa Anita Handicap is when?

A. March 15.

Q. So you would have to place it after March?

A. That is right. I would say it would be after March. [247]

Q. All right, that gives us the time of the year, but it doesn't give us which year.

A. It would have to be in the year 1941.

Q. Why do you say that?

A. For the simple reason that in 1941 when the war started I was in the California State Guard and I was called on active duty and I only worked part time when I could from November 8 until April and they were not handling it then. So it was previous to December 7, 1941. That is the closest I could give it, so it would be between then.

Q. It would be safe to say it was between March and December of 1941?

A. I would say yes.

Mr. Belli: I am sorry. I have run beyond 3:00 o'clock. I did not mean to. Does your Honor care to take the recess now?

The Court: Ladies and gentlemen of the jury, we will take the afternoon recess. Please bear in

(Testimony of Robert E. Hughes.)

mind the admonition not to discuss the case among yourselves nor converse with any person on any subject connected with the trial of the case, nor are you to form or express any opinion thereon until the case is finally submitted to you.

(Recess.) [248]

The Court: Proceed.

Mr. Belli: Q. By the way, you gave the Government a full statement of anything you knew about this, didn't you?

A. No, sir; they never asked me.

Q. Did you give them a statement, an interview?

A. Yes, I gave them an interview on those cards, my figures on the cards, and a definition of the various items on the cards, the ones that are in my handwriting; the parts on the bottom in ink, I never did know what it meant, or for that matter I wasn't even interested.

Q. Tell us about this out-of-state operator. There were some letters from him?

A. That's right, sir.

Q. And do you know—strike that.

Did you see these letters in Mr. Krakauer's possession?

A. Yes, sir. He kept track of those.

Mr. Belli: I think for the record I will ask your Honor this question first. I would like to get from this witness as close as possible the address of the man. Should we do that after court, and then put it in the record?

(Testimony of Robert E. Hughes.)

Mr. Campbell: I have no objection to asking him that.

Mr. Belli: Q. What is the address of the man?

A. The only address I knew of it was Phoenix, Arizona.

Q. Now, money was sent to him, wasn't it?

A. Yes, sir. [249]

Q. Where was it sent, and how?

A. It was handed to Mr. Krakauer in cash, and how Mr. Krakauer sent the money to him I don't know.

Q. All right. Coming back to the first transaction, tell us how the credit was established, and what was done, and what the system was.

A. \$2,000 was the first amount that was given to Mr. Wild to establish a credit. The system was very simple and very easy. \$200 flat bet to place on any horse on any track that was in the racing form, where equivalent odds were posted, where the horse was 120 to 1 in equivalent odds or less. Any horse that was 120 to 1 or over—I mean over 120 to 1, whether it was 125 or what, he was not considered. The horse had to be 120 to 1 or a mutuel price of four forty at a track, or under. A standing bet of \$200 to place was stipulated.

Q. Was that by letter, or how was that stipulation?

A. No; that was the way the system was explained to us by Mr. Wild, and that is the way the bets were to be placed in this book to keep track of them.

(Testimony of Robert E. Hughes.)

Q. All right. Now, where were those bets placed, in your room or Mr. Krakauer's room?

A. No; it was placed in the back room, in the pad.

Q. All right. Now, you handled that, you say, for about a week? [250]

A. Yes, sir.

Q. How many of those did you handle?

A. Well, the place averaged anywheres from, oh, I would say from five plays to fifteen plays a day.

Q. At 200 to 1?

A. At \$200 a play.

Q. At \$200 a play?

A. That's right.

Q. All right. Now, of your own knowledge, how long did this play with this chap continue?

A. I would say approximately three to four months.

Q. At the end of that period of time did you have a discussion with Mr. Wild pertaining to the continuance of this account?

A. Naturally.

Q. And what was concluded? Give us the conversation.

Mr. Campbell: Just a moment.

That is objected to as calling for hearsay.

Mr. Belli: Well, strike that, what was concluded.

Q. Tell us what was done with the account.

A. If I am not mistaken, Mr. Krakauer was also present at the time, and the three of us discussed that the play was one that—

Mr. Campbell: I am going to object to the discussion, if the Court please. He can state what was done. [251]

The Court: The objection will be sustained to the discussion.

Q. Was the play continued or discontinued?

(Testimony of Robert E. Hughes.)

A. It was discontinued.

The Court: All right.

Mr. Belli: Q. Do you know how much had been lost up to that time on the play?

A. The exact figures, no.

Q. About what?

A. I would say between \$2,500 to \$4,000.

Q. Now, were there any other bets or large amounts that were taken in there, such as this out-of-state operator?

A. Well, there would be players that would come down there and lay a deposit and would bet, and then sooner or later, why, they would withdraw their money and quit.

Q. Was Julius a good handicapper, Julius Wild?

Mr. Campbell: That is objected to as calling for his conclusion.

Mr. Belli: Q. If you know. Do you know of your own knowledge whether he lost on his own bets? A. Yes, he did.

Q. Can you tell us the source of your information? Give us the dates.

A. Well, Julius owned horses and—

Q. Is any of the hay, the feed, or the cost of the horses he [252] owned in these tickets?

A. No, sir.

Q. Did he own horses during this period, '41, '42, '43? A. Yes, sir.

Q. Where did he own those horses?

(Testimony of Robert E. Hughes.)

A. Well, mostly in the State of California, wherever—

Q. Did he run his own horses?

A. No, sir; he had a trainer.

Q. He paid the trainer?

A. He paid the trainer.

Mr. Campbell: Just a moment.

This is calling for this witness' conclusion, if the Court please. There is no foundation laid for this man's knowledge.

The Witness: Yes; I saw Mr. Wild pay Mr. Fitzgerald on numerous occasions.

The Court: Q. Who was the trainer, Mr. Fitzgerald? A. Mr. Fitzgerald.

Q. What was his first name?

A. Well, I don't—

Q. Well, whatever it was, at least you saw the defendant pay Fitzgerald? A. Yes, I did.

The Court: All right.

Mr. Belli: Q. Where? [253]

A. Right in the back of the book. He would come down there for expense money and his salary.

Q. Now, how would Julius pay him?

A. In cash.

Q. Did he take a receipt? A. No, sir.

Q. Where would the cash come from?

A. From his pocket.

Q. Did Julius carry large sums of money on his person? A. At all times.

Q. How many horses did he have during this period?

(Testimony of Robert E. Hughes.)

A. He had anywheres from one to about seven.

Q. His horses won, did they, in the races?

A. Not too consistently.

Q. Well, taking it over a period of '41, '42, and '43, do you know if his horses won or lost?

A. His horses lost more than they won.

Q. Have you any idea—

Mr. Campbell: Now, just a moment.

I am going to ask that the question and answer be stricken. The question "lost more than they won" can refer to the number of races or to the money.

The Court: I will grant the motion to strike. The very nature of this business is such that some latitude has to be allowed to this witness. This witness, as I understand [254] it, bore an intimate relationship to the defendant.

Q. You were there every day with him, weren't you?

A. That's right, sir.

Q. And did you undertake to watch the returns on his horses when they ran?

A. Well, I bet on them most of the time.

Q. You bet on them?

A. Yes, sir.

Q. You lost, too?

A. I lost.

Mr. Campbell: I simply wanted to point out, your Honor, that in regard to this testimony, a horse, of course—as the inference is here, a horse can only run into the money one or two times out of a number of times that it runs. But its purses may exceed its cost of maintenance and training. The number of races it wins is not a criterion.

(Testimony of Robert E. Hughes.)

The Court: Well, do I understand, counsel, both for the Government and the defense, that as an adjunct to the Defendant Wild's business he operated stables, in the accepted sense, to the end that he could charge and deduct hay and the usual expenses incident to the operation as against the winnings?

Mr. Campbell: I question that situation very seriously, your Honor.

The Court: Is this the first knowledge that you have [255] had on that score?

Mr. Campbell: Well, I have very, very conflicting knowledge. I perhaps shouldn't state it in the presence of the jury.

Mr. Belli: I have no objection.

The Court: I merely want to know the scope that we can expect on the evidence here. We are going into a field now that is entirely separate from the operation of a book, and are you prepared to prove, counsel—

Mr. Belli: He was in the business from all ends, I think, your Honor. That is about as far as I want to go. Just to show the general character, that he certainly wasn't into the business in the magnitude, say, of Mr. Howard, or someone like that, but he did have a couple of horses here, apparently, and he tied up his business, not only with the book, but with the horses, the money that he would win or lose in his own business. He would go down to the track, and we will show that he lost it there.

(Testimony of Robert E. Hughes.)

The Court: One further question. I think I understand generally, but I have this one question: Are you prepared to submit any records, books of account, memoranda, or other data that would substantiate or fortify any of your contentions with respect to the maintenance of the stables or the horses?

Mr. Belli: Well, let me, if I may, ask that on voir [256] dire.

The Court: We are getting—

Mr. Belli: We are in the position that all our records are gone.

The Court: And do you charge, counsel — at least, thus far you have charged—that part of the records were maintained by Mr. Krakauer; that the black book, so-called, also contained information concerning deductions on hay and the like?

Mr. Belli: I don't believe so. I will have to ask this witness on that.

Q. Did they contain anything on that?

The Court: You can examine this witness on the contents of the books. I may limit this evidence, coming as it does.

Mr. Campbell: You mean a cross examination, or on voir dire?

The Court: Right now, yes.

Mr. Belli: I might ask just one further question.

The Court: Yes.

Mr. Belli: Q. If Mr. Wild did keep any books at all on the horses and Mr. Fitzgerald and those

(Testimony of Robert E. Hughes.)

people, as such—did he keep any records or books of account that you know of? A. No, sir.

Mr. Campbell: Now, may I ask my voir dire question? [257]

Mr. Belli: Yes, sir. I was just going to ask one other question. We might ask something—we might ask the names of these horses.

The Court: Three, four, five or six horses. That is an operation in itself.

Q. You mean to say he never kept books at all?

A. That part I never did see, sir.

Mr. Campbell: May I ask these questions?

The Court: Yes.

Mr. Campbell: Q. Mr. Hughes—

A. Yes, sir.

Q. (continuing:) —you have referred here to a little black book. It is a fact, is it not, that the only records of any kind maintained by or for Mr. Wild with respect to the operation of his business were these cards, Government's Exhibits 7, 8, and 9, is that not a fact?

A. I didn't understand the question. If you will, repeat it?

Q. Weren't these the only records that were ever maintained? A. No, sir.

Q. Mr. Hughes, do you recall making a statement under oath— A. That's right, sir.

Q. (continuing): —on the 21st day of March, 1946, at Room 1907, 100 McAllister Street Building, at which were present a stenographer taking the questions and answers down, and subsequently

(Testimony of Robert E. Hughes.)

you returned, made corrections in that statement [258] and initialed each page?

A. That's right, sir.

Q. And is it not a fact that on that occasion you testified as follows to the following questions—

Mr. Belli: Have you got a copy of the statement?

Mr. Campbell: I have the original here, which I will mark for identification.

Mr. Belli: I think we are entitled to see the copy, your Honor.

Mr. Campbell: Yes.

The Court: You may show it to him, counsel.

Mr. Belli: Don't you have a copy of it?

Mr. Campbell: I don't have it immediately available. There is one.

Q. (continuing) Question by Mr. Burkett (reading):

“Q. Were any bookkeeping records of any kind kept of the race horse bookmaking business of Mr. Wild?

“Mr. Hughes: The only records were small cards.

“Mr. Burkett: By whom were these small card records kept during 1941?

“Mr. Hughes: In 1941 by Julius Krakauer.”

Now, do you recall so testifying?

A. That's correct. [259]

Q. Now, do you remember—

Mr. Belli: Just a moment. Let him finish.

Mr. Campbell: Pardon me.

(Testimony of Robert E. Hughes.)

A. (continuing) That's correct. If you will remember, in that statement you are referring to the room play, and that is the only record that was kept of the room play.

Q. I am going to show you this statement and ask you to point out to me wherein any such limitation—pardon me; I will have this marked first.

May I have this marked for identification as Government's next in order?

The Court: It may be marked for identification.

The Clerk: Government's Exhibit 14, for identification.

(The statement referred to was marked U.

S. Exhibit No. 14 for identification.)

Mr. Campbell: Q. I am going to show you this statement and ask you to point out to me where any such limitation was indicated, either by you or by the people who were questioning you (handing statement to the witness).

Mr. Belli: That is a pretty broad statement, your Honor. That would take the rest of the session to do that.

The Court: It would probably take the rest of the session to do that, yes. I suggest that the witness read it.

The Witness: I have already read it.

The Court: Q. Are you familiar with that?

A. Yes, very much so. I have a copy of it at home.

Mr. Campbell: Q. You were given a copy of it?

A. Yes, sir.

(Testimony of Robert E. Hughes.)

Q. And can you state from your familiarity, or point out in this exhibit where any such limitation was made?

A. Your Honor, this statement was made by me—

Mr. Campbell: Now, your Honor—

Mr. Belli: Let the witness finish. You asked him a question.

Mr. Campbell: Now, I wish to press for an answer to my question before the explanation.

The Court: All right.

Q. You may answer, Mr. Hughes, and then make an explanation.

A. I didn't understand the question, the way he is putting it.

Mr. Campbell: Will you read it, Mr. Reporter?

(Record read by the reporter.)

Mr. Belli: The witness, if your Honor please, was asked to state "from your familiarity."

Mr. Campbell: I will reframe the statement.

Q. Can you—

Mr. Belli: May I have an answer? He started to answer, and I submit he is entitled to.

Mr. Campbell: My question was "where, in the statement"—

Mr. Belli: No, no. [261]

Mr. Campbell: I will withdraw the question and reframe the question.

Mr. Belli: Your Honor, the question was asked, and there was an answer started. I think the witness is entitled to answer.

(Testimony of Robert E. Hughes.)

The Court: Well, withdraw the question and let him answer another one.

Mr. Campbell: Q. Mr. Hughes, will you state where, in that statement which you hold in your hand, Government's Exhibit 14 for identification, where any limitation of the questions regarding the books or records or operation was confined to any room or any particular part of Mr. Wild's operations?

A. The only inference that I can make is that this was limited; that the whole thing is based on one thing, and one thing only, and that is those cards. Every question that was asked me in this paper was about those cards (indicating).

Q. Well, you were asked the specific question, were you not, to which I have directed your attention, and you gave the answer (reading):

"Were any bookkeeping records of any kind kept of the race horse bookmaking business of Mr. Wild?" And your answer is (reading):

"The only records were small cards." That was your answer, was it not, sir? [262]

A. That's right.

Mr. Campbell: That is all.

Mr. Belli: Q. Cards were shown you at that time, were they? A. That's right, sir.

Q. The Government had them in their possession at that time? A. That's right, sir.

Q. And what was the date of that, that the Government had that in their possession?

(Testimony of Robert E. Hughes.)

A. I don't remember. You can find out in the statement.

Q. All right, let's look in the statement and see—

Mr. Campbell: Right at the top of the statement.

Mr. Belli: March 21, 1946.

Q. You are positive the Government had the cards then?

A. Yes, sir; they were shown to me, and then my statement will identify the various numbered cards in there, if they are in my handwriting, and an explanation of what is in each card. Every card that has my handwriting on there is definitely numbered in that statement. Those that are not in my handwriting are also stated in there.

Mr. Belli: All right.

May we get back to the question, now?

The Court: Yes, you may.

Mr. Belli: I am embarrassed; I have lost track, myself.

Do you recall the last question? I had been thinking [263] of something else there. I think we were referring — yes — to Mr. Fitzgerald and the race horse business.

The Court: Whether any payments were made to Mr. Fitzgerald, and the witness stated yes, that there were payments made in the room, and that they were made in cash.

Mr. Belli: Now, I don't want, your Honor, to go into the whole racing stable business of Julius

(Testimony of Robert E. Hughes.)

here. There might be a question of law whether that would be deductible or not. But I would just like to ask a couple of questions with reference to the records.

The Court: All right.

Mr. Belli: Q. Now, records were kept in connection with that? A. No, sir.

Q. Mr. Fitzgerald—can you tell us where he is, where he hangs out?

A. The race track, I understand.

Q. How old a chap is he?

A. He is quite an elderly fellow; he is so old a fellow that he might be dead now. I don't know. You will have to find out from Mr. Wild about that.

Q. Is he a man known around the race tracks?

A. Very much so. His brother is Norman Church's trainer.

Q. Now, I think counsel rightly corrected me with reference to the question I asked you being indefinite, whether these [264] horses of Mr. Wild's won or not. I refer to absolute figures of money, rather than number of races. Did they win money over all, or lose over all, during this period of time?

Mr. Campbell: Objected to as no proper foundation laid; calling for the conclusion of this witness.

The Court: Sustained.

Mr. Belli: Q. Do you know of your own knowledge whether these horses of his won money or not over the period of '41, '42, and '43?

(Testimony of Robert E. Hughes.)

Mr. Campbell: May that be answered yes or no?

The Witness: Will you state the question again?

Mr. Belli: Yes.

Q. Do you know of your own knowledge whether these horses of Mr. Wild's won money over '41, '42, and '43, or if they lost?

A. I do not know.

Q. All right. Now, let me, in the short time that remains here—

The Court: I think we will run until 4:30, on account of the services in the morning.

Mr. Belli: All right. Then that will get us pretty far along with this witness.

The Court: Is that agreeable to all members of the jury, to run until 4:30?

(Jurors nod assent.)

The Court: Thank you. [265]

Mr. Belli: Q. Now, any other operators like the chap from Arizona that you have mentioned that bet with Mr. Wild?

A. Just the various runners.

Q. How about out—withdraw that.

How about Mr. Wild, himself? Did he then bet at the track on occasion, in '41, '42, and '43, if you know of your own knowledge?

A. At every opportunity.

Q. And would he bet at the track—out of what fund of money? A. What?

Q. Out of what fund of money would he bet at the track?

Mr. Campbell: That is objected to as calling

(Testimony of Robert E. Hughes.)
for the conclusion of the witness.

The Court: I will sustain an objection.

Mr. Belli: Q. Do you know how he would bet?
Did you go down there with him?

A. Sometimes. Very, very infrequently. Somebody had to stay with the business, and I was elected. I ran his business, the room play, and most of his bets would be in from the runners, so he would leave and go down to the track, so I had to stay at the room. The only time that I ever went with him was on the weekend, when we went to Caliente.

Q. How many times did you go to Caliente?

A. I would say between six and ten times.

Q. None of the Caliente play is reflected in these sets of [266] cards? A. No, sir.

Q. By the way, when Mr. Krakauer left Mr. Wild, could you give the ladies and gentlemen of the jury a little idea of what the scene was like, if you remember?

A. No, sir; I was not working for Mr. Wild at that time.

Q. You weren't there?

A. I was over in the defense—

Q. Who else was there that would know about the termination of the employment?

Mr. Campbell: That is objected to as calling for his conclusion.

The Court: Sustained.

Mr. Belli: All right.

Q. When you went down to Caliente in '41 and '42—right? A. '41, sir.

(Testimony of Robert E. Hughes.)

Q. (continuing) —did Julius make book in Caliente? A. Yes, sir.

Q. And how would he make book down there? How did he do it in Mexico?

A. Well, they have two options down there: One, you can bet in the mutuels, or you can bet in the bookmakers, just like you do in the City here. You can either go down to the race track or you can bet with a bookmaker when the books are open here. [267]

Q. Well, did he take any money down with him?

A. Naturally. He had to take a bankroll down with him.

Q. And did he carry that in his pocket?

A. Yes, sir.

Q. Any checks, or anything? A. No, sir.

Q. And when he would get down there he would get off the plane where—San Diego?

A. No, sir; Burbank.

Q. At Burbank? A. Yes, sir.

Q. And then how would he go from there to Caliente?

A. Well, I never went with him from there. He would always leave me, and I would fly down from Burbank to San Diego.

Q. I see. How would he get down, have you any idea?

A. Yes. He would go in and meet his various friends that he knew there, and he would stay Sat-

(Testimony of Robert E. Hughes.)

urday night, and I would go down and stay in the hotel at San Diego.

Q. What is the name of the hotel?

A. U. S. Grant Hotel.

Q. In whose name is the room?

A. Julius Wild.

Q. And then you would meet Julius there?

A. I would probably meet him there the next morning and we would all go to the track together.

Q. How would you go over?

A. He hired, between him and some other fellows that lived in Los Angeles, they would go get a fellow that had a big sedan, and they would drive from Azusa, or from Los Angeles, and go down to San Diego, and then they would pick me up, and then we would go down to the race track.

Q. Then when you would get over at the race track there, what was the magnitude of the time that you were there—and give the times, the people that were there—of his operations in making book there?

Mr. Campbell: I am sorry; I didn't get all that question. Would you read it?

Mr. Belli: I will reframe it.

Q. On the occasions that you were there—and state the occasions—how large was his operations?

A. Well, that is something that you couldn't handle—I mean, you couldn't determine. We were busy, and two men were in the front, standing at a little platform, and you were just going as fast as you can, getting the bets from the players in

(Testimony of Robert E. Hughes.)

front of you and handing them back to a master sheet, and he would, in turn, hand you a *hard*, and you would get the money first, and then give the card to the man that made the bet. But the play ran anywheres between \$4,000 and \$10,000 a Sunday. There was 13 races.

Q. That was the gross? [269] A. Yes.

Q. Did he win or lose down there?

Mr. Campbell: Now, just a moment.

That is calling for the conclusion of the witness.

Mr. Belli: Q. If you know.

The Court: Sustained.

Mr. Belli: Q. Do you know whether he won or lost? A. I know he lost.

Q. How do you know that, will you tell us?

A. Because at one time he had to borrow money to pay the association off down there in order to keep his book.

Q. Which association?

A. Caliente Jockey Club.

Q. When was that? A. It was in 1941.

Q. How much did he have to pay them off?

A. I don't know.

Mr. Campbell: All this is conclusion of this witness, if the Court please. I am going to object to it.

The Court: He said he doesn't know.

Mr. Belli: Q. You don't know?

A. No, sir.

Q. By the way, during the time that you were with him here in 1941 and in 1942 and '43---and

(Testimony of Robert E. Hughes.)

this goes to his attention to his business—was he intoxicated on many occasions? [270]

A. Several.

Q. Huh? A. Several.

Q. What do you mean by “several”? I want the fact. Come on. A. Well, I would say—

Mr. Campbell: I object to that as being immaterial, unless it is a defense of intoxication, on the question of wilfulness, if the Court please.

Mr. Belli: Well, I think some of it might very well be that, but it wasn't offered for that purpose presently.

The Court: I can't see the present materiality of going into any phase of intoxication.

Q. You attended to the business at all times, didn't you? A. And also him, sir.

The Court: All right. I can't see the materiality of it.

Mr. Belli: All right.

Q. But he carried a bankroll on him, didn't he?

A. That's right.

Q. And would he bet when he was intoxicated?

A. Yes, sir.

Q. More than one occasion?

A. Whenever he was drunk he would bet. That is where it would start, usually at the race track.

Q. Over what period of time was this? [271]

A. '41, '42, and '43, at the times in question.

Q. Tell us about Julius at the place there with reference to his donations to the Red Cross, and that type of charity. Are they reflected on those cards here? A. No, sir.